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In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT C. and PATRICIA R. YOUNG,
JANE JONES, AND FELLOWSHIP OF CHRIST CHURCH,
PETITIONERS,

VS.

ROBERT and JUDITH BOGRETTE, WILLIAM and TRACIE CUPPY,
OLAF and EMERIN HELLAND, JOHN T. and BERNICE HUGHES,
KENNETH and ELIZABETH STAUGAARD, CHARLES and
CAROL COHOON, and LEO W. BURTON,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment prohibit a court from deciding a case based upon matters which the court stated at the commencement of trial were not in issue in the case, and from granting relief to a party far beyond which the court stated (at the start of trial) could be awarded in the case?

2. Do the First and Fourteenth Amendments to the Constitution of the United States prohibit a civil court from dissolving a duly constituted church and appointing a receiver over its property without, at a minimum, affording prior notice and an opportunity to defend?

3. Do the First and Fourteenth Amendments prohibit a civil court from resolving disputes involving real property by reference to church doctrine?

4. Does Michigan Statute (MCLA §450.180) prohibit courts of that state from dissolving a duly constituted church and appointing a receiver over its property absent initiation of *quo warranto* proceedings by the Michigan Attorney General?

5. Did the trial court err when it failed to resolve the case upon the basis of the statute of frauds and failed to find that respondents did not prove the existence of a joint venture to develop the property in issue?

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OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals is not reported; it appears at App. 1d (Civ. No. 78-5213). The judgment of the circuit court upheld by the Court of Appeals also is not reported; it appears at App. 1c (Civ. No. 77-152370 AZ). The circuit court's unreported opinion, upon which its judgment is based, appears at App. 1a (Civ. No. 77-152370 AZ). No opinion was rendered by the Supreme Court of Mich-

igan, which denied petitioners' application for leave to appeal from the decision of the Court of Appeals (App. 1f (Civ. No. 64990)).[1]

JURISDICTION

Petitioners seek issuance of a writ of certiorari to review the *per curiam* opinion of the Court of Appeals of the State of Michigan, affirming the judgment entered by the circuit court for the County of Oakland, State of Michigan. The Michigan Supreme Court denied review of the opinion of the Court of Appeals.

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[1] Appendices A through F include the opinions, orders and judgments below. They are:

(1) Opinion, dated May 16, 1978, of the Honorable James S. Thorburn, Oakland County Circuit Court, finding the individual petitioners guilty of fraud, ordering dissolution of the Fellowship of Christ Church and appointing a receiver to take control of all of the Church's property. App. 1a.

(2) Amendment of Findings of Fact, dated November 22, 1978, App. 1b.

(3) Judgment, entered by the circuit court on November 22, 1978. App. 1c.

(4) Opinion of the Michigan Court of Appeals, dated January 28, 1980, affirming the judgment entered by the circuit court, summarily finding "without merit" and thus not discussing the grave constitutional issues raised by petitioners regarding dissolution of the Fellowship of Christ Church and the circuit court's illegal entanglement in its affairs. App. 1d.

(5) Order of the Michigan Court of Appeals, dated March 20, 1980, denying petitioners' motion for rehearing. App. 1e.

(6) Order of the Michigan Supreme Court, dated December 3, 1980, denying petitioners' application for leave to appeal from the decision of the Michigan Court of Appeals. App. 1f.

The judgment of the circuit court was entered on November 22, 1978. Final judgments of circuit courts in the State of Michigan may be reviewed as of right by the Court of Appeals. GCR 1963, 806. Timely appeal to the Court of Appeals was taken. The opinion of the Court of Appeals was rendered on January 28, 1980. Petitioners sought rehearing in accordance with GCR 1963, 819.4, but such was denied.

Appeals may be taken to the Supreme Court of Michigan only upon application and leave granted, in the discretion of that Court. GCR 1963, 853(1). Application for leave to appeal to the Michigan Supreme Court was timely filed by petitioners. On December 3, 1980, the Michigan Supreme Court declined to review the Court of Appeals' decision. Within ninety days of that date, on February 23, 1981, Circuit Justice Stewart extended from March 3, 1981 to May 2, 1981, the time in which to file this petition for writ of certiorari.[2] This petition is being filed before that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3).[3]

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[2] *See* App. 1g.

[3] Because the Michigan Supreme Court's denial of petitioners' application for leave to appeal constitutes a refusal to exercise its authority, petitioners seek review of the opinion of the Court of Appeals, "the highest court of [the] State in which a decision [going to the merits of the circuit court's challenged judgment] could be had." 28 U.S.C. 1257. *See Sullivan* v. *Texas*, 207 U.S. 416, 422 (1908); *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 160 (1954).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

United States Constitution, Amendment XIV, §1:

"[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Michigan Statutes involved in this case are set forth at App. 1h and 1i.

STATEMENT OF THE CASE

SUMMARY

This case was tried to the circuit court as an action involving conflicting claims to real property between present and former members of the Fellowship of Christ Church. The respondents asserted that they and the petitioners entered into a joint venture to develop twenty-two acres of land situated in Oakland County, Michigan. Petitioners denied the existence of any such venture and asserted that the Fellowship of Christ Church purchased the land and has held title to it since the date of purchase.

The circuit judge, following trial, handed down an opinion contrary to law, contrary to the record in the case and unprecedented in the annals of Anglo-American jurisprudence. The court, on its own initiative, without request from either side in the litigation, totally contravened its prior limitation of the trial issues — involving real property claims only — and dissolved the Fellowship of Christ Church, a viable, *bona fide* ecclesiastical corporation and appointed a receiver to take control of all its property. The decision was appealed, but despite the potential impact on the future existence of the Fellowship of Christ Church, and indeed, on all churches in this country, the Court of Appeals affirmed the judgment of the trial court without so much as discussing the grave constitutional issues raised. The Michigan Supreme Court's summary refusal to review this decision leaves the judgment intact, the Church dissolved, and its members stripped of their right to worship without interference, guaranteed by the First Amendment.

After the Michigan Supreme Court declined to review the case on application of petitioners, the Attorney General for the State of Michigan sought to intervene in the proceedings

and requested the Michigan Supreme Court to reconsider its refusal to review the Court of Appeals' decision, asserting that the trial court, contrary to Michigan statute, usurped the Attorney General's authority to seek dissolution of an ecclesiastical corporation, rendering the circuit court's judgment void for lack of jurisdiction. The Court has not acted on the Attorney General's request.[4]

Actions as sweeping and intrusive as those taken by the circuit court must not be allowed to go unquestioned without plenary review. The bizarre and patently illegal conduct of the trial judge, coupled with the apparent failure of the appellate courts to recognize the grave constitutional ramifications thereof, erodes the wall that separates church and state, and destroys the foundation and structure of religious freedom itself.

Whenever constitutional rights and liberties are abridged, careful judicial scrutiny is warranted. Yet even a cursory review of the record in this case reveals the shocking manner in which petitioners have been stripped of their constitutionally protected rights and liberties without due process of law.

BACKGROUND OF DISPUTE

Petitioner Robert C. Young was graduated from Grinnell College in 1941. He received a Bachelor of Divinity degree from Princeton Seminary in 1946 and a Doctor of Philosophy degree from the University of Edinburgh in 1949. Thereafter,

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[4] To date, the Michigan Supreme Court has not ruled on the Attorney General's motion or on a separate motion for reconsideration filed by petitioners. Nonetheless, the time within which petitioners must seek a writ of certiorari from this Court is not tolled.

until July, 1958, Dr. Young served as pastor of the Highland Park Presbyterian Church. All of the respondents, except William Cuppy and Leo Burton, were members of that Church during some or all of these years. In July, 1958, Dr. Young resigned as minister of the Highland Park congregation and moved with his family to a small town in northern Michigan. During the summer of 1958, respondents Staugaard and Cohoon visited the Youngs to discuss the possibility of Dr. Young becoming pastor of a church to be formed in Rochester. After Dr. Young agreed, the Fellowship of Christ Church was formed and incorporated as a Michigan ecclesiastical corporation.

For some time, the congregation rented space in a building which they used as a church; however, this facility soon became inadequate, so new quarters were sought. In May, 1960, the Fellowship of Christ Church purchased on land contract 22 acres of farm land located in Oakland County, Michigan. A church facility was built on the property, and members of the congregation thereafter bought small parcels of land from the Fellowship of Christ Church upon which they built homes. In this way, the parties belonged to a community which geographically, spiritually and socially had the Church at its center.[5] The subdivision in which they lived was named "Heartpeace Hills". The Church retained title to some 18 acres of the land, representing that portion of the property

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[5] In the words of the trial court:

> "[T]he lives of all were to be bound together religiously, socially and property-wise with the thought in common that 'Christian principles' would be the constant determining factor in their lives." *See* circuit court opinion, p. 3, at App. 3a.

not conveyed to its members. Eventually some 30 families consisting of about 110 people joined the Fellowship of Christ Church.

In 1969, a religious dispute arose. As a result, respondents left the Church and joined another congregation. However, they continued to reside in homes built on the land which they purchased from the Fellowship of Christ, adjacent to it. The Fellowship of Christ Church continued in existence. Dr. Young and his family, along with others who chose to continue under his ministry, comprised the congregation.

In 1975, because of the severe hostilities which had developed between present and former members of the Fellowship of Christ, the Church board and congregation voted to sell the balance of the Church's property and to relocate in a rural environment more religiously united. The destination was a Christian Ministry Center in British Columbia. Respondents were offered the property which the Church intended to sell, but they declined to purchase it. The Church then advertised the property and endeavored to sell it.

CHRONOLOGY OF THE CASE

In 1977, respondents filed suit against petitioners, alleging that the attempt of the Church to sell the realty violated a so-called joint venture agreement entered into by six of the respondents and petitioners Young to develop the property. Petitioners denied the existence of any joint venture agreement among the parties and asserted the statute of frauds and estoppel as affirmative defenses.

At the outset of trial, the trial judge expressly limited the issues to be tried and the relief available to respondents, to the facts and prayers contained in their Complaint, stating:

> "You are both bound for the relief that the plaintiffs are going to get by [the Cohoon] Complaint. And you are also bound, I might add, on the facts you intend to prove by that last Complaint."[6]

Respondents' Complaint[7] did not request dissolution of the Church or appointment of a receiver, nor was fraud asserted against petitioners. App. 1k.

At trial, each of the respondents testified on direct examination and was then cross-examined. Respondents introduced some sixty exhibits in support of their case, along with a portion[8] of the deposition transcript of Dr. Young, and then rested. The court's opinion indicates that the trial judge treated the entire deposition of Dr. Young as being in evidence.[9] Petitioners introduced nine exhibits and, without putting on any witnesses, rested.

The trial court rendered its opinion one week later, finding that there had been a plan to develop the Heartpeace Hills property, that the plan was thwarted by the fraudulent conduct of Dr. Young and his wife and that, as a result, the

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[6] *See* trial trans. (Book 4, pp. 3-6) at App. 1j.

[7] Respondents filed a number of Complaints and Amended Complaints in this cause. However, to clarify the issues to be litigated at trial, the court directed counsel for both parties to agree upon a statement which succinctly set forth plaintiffs' claims. This was accomplished by stipulation whereby the Complaint of Charles and Carol Cohoon ("the Complaint"), dated September 16, 1977, was adopted by respondents as presenting their claims and theories to be tried by the court. App. 1j.

[8] *See* trial trans. (Book 6, p. 7).

[9] *See* circuit court opinion, pp. 4-5, App. 4a.

Fellowship of Christ Church was to be dissolved, and a receiver appointed to administer the estate, sell the remaining acreage, and complete the development.

The case crystallized into a controversy ripe for review by this Court through the entry of, and the refusal to set aside, the judgment entered by the circuit court, ordering dissolution of the Fellowship of Christ and appointment of a receiver to take charge of its property. Arguing that the judgment impermissibly entangles church and state and violates their First and Fourteenth Amendment rights, as well as Michigan law which requires the Attorney General to initiate proceedings for those purposes, petitioners sought unsuccessfully to have the judgment set aside in the State's appellate courts through appeal. Petitioners argued, also to no avail, that the circuit court infringed petitioners' Fourteenth Amendment rights when it defined (and limited) the trial issues and then proceeded to decide the case based upon matters which the court had expressly stated were not to be litigated. Finally, petitioners unsuccessfully asserted that the trial court erred when it failed to find that the statute of frauds barred plaintiffs' claims and that respondents, in any event, did not not prove the existence of the alleged joint venture.

REASONS FOR GRANTING THE WRIT

The judgment entered by the circuit court drastically abridges the rights of petitioners under the Free Exercise and Due Process Clauses of the First and Fourteenth Amendments of the Constitution of the United States. If it is allowed to stand, the judgment will destroy the constitutionally protected right of all citizens to exercise freely their religious beliefs. For these reasons, and because petitioners believe that the authority of a civil court to dissolve a church presents an important question of federal law which has not been, but

should be, settled by this Court, petitioners seek issuance of a writ of certiorari.

I.

A LITIGANT MUST BE ABLE TO RELY ON A TRIAL COURT'S EXPRESSED LIMITATION OF THE ISSUES TO BE TRIED AND THE EXTENT OF THE RELIEF AVAILABLE TO THE PARTIES. PETITIONERS' RIGHT TO DUE PROCESS OF LAW WAS VIOLATED IN THE INSTANT CASE BECAUSE THE COURT, WITHOUT NOTICE, DECIDED THE CASE ON A BASIS CONTRARY TO, AND GRANTED RELIEF WHOLLY BEYOND, THE PREVIOUSLY EXPRESSED LIMITATIONS.

> "The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them." (*Morgan* v. *United States*, 304 U.S. 1, 18 (1938)).

In the instant action, respondents tried their case, and petitioners defended it, in accordance with the trial court's express instruction that the parties were bound by the facts and prayers asserted in respondents' Complaint. Although the issue of fraud was never before the trial court and was precluded by the court's limitation of the issues, the trial judge's entire opinion is premised on the conclusion that petitioners Young fraudulently established the Fellowship of Christ Church and schemed to deprive respondents of their property from the outset. If the issue of fraud had been pleaded by respondents, or had it been asserted at trial, petitioners certainly would have presented testimony in rebuttal. None was introduced because the question was never raised. Even counsel for respondents conceded during oral argument

before the Michigan Court of Appeals that his clients never claimed fraudulent inducement in the case.[10] To allow the trial court nonetheless to find fraud and then use that finding as the rationale for the court's entire opinion, is patently unjust and abridges petitioners' right to due process.[11]

Although the propriety of the dissolution and receivership order is examined in later sections of this petition, it should be noted that the granting of such relief contravened the trial court's own prior statement limiting the relief available to the parties. Neither dissolution of the Church nor appointment of a receiver over its property was sought in respondents' Complaint. Petitioners were never advised that their religious survival was at stake.

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[10] *See* trans. of oral argument before Michigan Court of Appeals, p. 41.

[11] With respect to stipulations limiting the scope of triable issues, the Michigan Supreme Court stated in *Dana Corp* v. *Employment Security Commission*, 371 Mich 107, 110 (1963):

> "A party must be able to rest secure on the premise that the stipulated facts and stipulated ultimate conclusionary facts as accepted will be those upon which adjudication is based. Any deviation therefrom results in a denial of due process for the obvious reason that both parties by accepting the stipulation have been foreclosed from making any testimonial or other evidentiary record."

To allow evidence of fraud in the face of Michigan Court Rule 112.2, works an additional injustice. That rule requires that allegations of fraud must be specific. *See, Okulich* v. *Goodman*, 239 Mich 569 (1927). Respondents cannot assert that fraud was pleaded with specificity; it was not even pleaded.

The trial court's finding of fraud, unsupported by any evidence,[12] seems to have been based on an initial premise which even the trial court subsequently admitted was incorrect. In its original opinion, the court found as an undisputed fact that the parties agreed to form the Fellowship of Christ Church "to hold legal title to the 22 acres."[13] Respondents conceded that this was erroneous and asked the trial judge to amend his opinion,[14] which the court did.[15]

The trial judge's incorrect finding is consistent with his view that Dr. Young and his wife "intended to subvert gifts of time, energy, money and property to their own use" by using "as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation" and that the Church was "set up for the purpose of developing a residential subdivision."[16] As a consequence, the court dissolved the Church. The court was wrong, however, when it found that the Fellowship of Christ Church was established to purchase and receive title to the property in question, and there is no way of knowing to what degree this misapprehension affected the Court's ultimate decision. A fair reading of the evidence, coupled with the court's opinion, suggests that it was significant. If one considers that it was the respondents who sought

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[12] *See* n. 10, *supra*.

[13] *See* circuit court opinion, p. 3, App. 3a.

[14] Respondents' counsel stated that this finding:

> "[G]ives the impression that the project of starting this subdivision was started and then the church corporation was formed afterwards. In fact, it was pleaded and proved that the church was started, [first] . . ." (Trans. of proceedings, October 25, 1978, p. 8.)

[15] *See* App. 1b.

[16] *See* circuit court opinion, pp. 6, 8, at App. 5a, 6a.

out Dr. Young to serve as their minister and it was the respondents (and third parties) who established the Church, it is absolutely impossible to conclude that Dr. Young began the Church and used it for his own personal benefit.[17]

Although religion must not serve as a cloak for fraud, vague and unsupported findings of wrongdoing must not serve as a cloak for a judicial takeover of an ongoing law-abiding church. In fact, there was no evidence, nor did respondents claim, that petitioners lured them into the Church or caused them to purchase their individual lots with false and fraudulent statements or that Dr. Young converted the Church from a religious entity into a mere vehicle to serve sinister and fraudulent purposes. Quite to the contrary, even the trial judge expressed his belief that what happened was neither planned nor foreseen by any of the parties.[18]

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[17] *See* trial trans. (Book 1, pp. 7-9), at App. 11.

[18] During closing argument, the court engaged in the following exchange with petitioners' counsel:

> "MR. BRODER: Well, your Honor, I think the intention here, in fairness to all the parties, was that as church members they move onto this property. The church might have some facilities and they would use it. I don't think it ever dawned on anyone that they would stay on the property and not be church members.
>
> THE COURT: I think you are exactly right on that . . ." (Trial trans. (Book 8, pp. 107-8).)

II.

THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES PROHIBIT A CIVIL COURT FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY WITHOUT, AT A MINIMUM, AFFORDING PRIOR NOTICE AND AN OPPORTUNITY TO DEFEND. PETITIONERS' CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT, WITHOUT NOTICE, DISSOLVED THE FELLOWSHIP OF CHRIST CHURCH AND APPOINTED A RECEIVER OVER ITS PROPERTY.

In his opinion, the trial judge acknowledged that a court cannot interfere in the internal affairs of a church, but then proceeded to do that very thing. Justification was premised upon the conclusion that the Fellowship of Christ "was a church without a congregation" and that "the so-called ecclesiastical corporation [was] not a church."[19] These findings are entirely without support in the record. Respondents never claimed that the Fellowship of Christ was not a church or that no congregation existed. Nor were these matters questioned by the court at trial. There is simply nothing in the record indicating that the Fellowship of Christ Church did not exist for religious purposes or that its members did not belong to the Church in order to practice their religion. Absent is any suggestion that petitioners' beliefs were not truly held, *United States* v. *Seeger*, 380 U.S. 163 (1965), or that petitioners' beliefs were not rooted in what may loosely be characterized as theological conviction, *Wisconsin* v. *Yoder*, 406 U.S. 205

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[19] *See* circuit court opinion, pp. 5-6, at App. 4a, 5a.

(1972).[20] Respondents never asserted that petitioners' beliefs were anything other than sincere and religiously based.

From its inception,[21] the Fellowship of Christ Church was devoted to religious purposes. Indeed, respondents repeatedly testified that they attended church services throughout the week and conducted their affairs recognizing the valid existence of the Church and their relationship to it as members. In fact, many of the respondents had been Church officers and Elders. The court's conclusion that the Fellowship of Christ was not a church is completely contrary to the position taken by both sides in the litigation.

Equally unsound is the trial judge's conclusion that the Fellowship of Christ was a church without a congregation, apparently predicated upon the trial judge's observation that the Church "seemed to consist of the pastor, his wife and their family, and one Janey Jones".[22] It is unclear whether this is a factual finding or mere impression. In any event, the statement is completely untrue[23] and irrelevant because the Fel-

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[20] *See, Stevens* v. *Berger*, 428 F.Supp. 896, 901 (E.D.N.Y. 1977), in which the court formulated this two-step test to determine when religious beliefs or practices are entitled to First Amendment protection.

[21] The Fellowship of Christ Church was incorporated under MCLA 450.178, which provides that: "Any number of persons, not less than three [3], may incorporate for the purpose of establishing any church organization for the purpose of teaching and spreading their religious beliefs and principles."

[22] *See* circuit court opinion, p. 5, at App. 4a.

[23] At p. 4 of the Brief filed by respondents with the Michigan Supreme Court in opposition to petitioners' motion for immediate reconsideration, respondents recognize that the congregation may

continued on next page

lowship of Christ would be no less a church even if it did consist only of Dr. Young, his wife and Jane Jones. *Cf. Fowler* v. *State of Rhode Island*, 345 U.S. 67, 69-70 (1953) ("[I]t is no business of courts to say that what is religious practice or activity for one group is not religion under the protection of the First Amendment.")[24]

III.

THE FIRST AMENDMENT REQUIRES THAT NEUTRAL PRINCIPLES BE EMPLOYED BY CIVIL COURTS WHEN RESOLVING CHURCH DISPUTES. IN THE INSTANT CASE, THE TRIAL COURT FAILED TO APPLY NEUTRAL PRINCIPLES, IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS.

This Court has stated repeatedly that the First Amendment imposes severe restraints on the ability of civil courts to interfere in disputes involving church property. *See*, e.g., *Presbyterian Church* v. *Hull Church*, 393 U.S. 440 (1969); *Jones* v. *Wolf*, 443 U.S. 595 (1979). Petitioners contend that the trial court violated the premise of the "neutral principles" approach — that the rules of decision must be theologically

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have consisted of additional individuals. A careful reading of Dr. Young's deposition testimony will disclose that there are many members of the congregation other than those named by the trial judge. This question never arose at trial.

[24] *See*, also, *Stevens* v. *Berger*, 428 F.Supp. 896, 900 (E.D.N.Y. 1977) ("[S]o far as the law is concerned, one person's religious beliefs held for one day are presumptively entitled to the same protection as the beliefs of millions which have been shared for thousands of years.")

unbiased, entailing no judgment on questions of religious doctrine or ecclesiastical organization.

Respondents have asserted below that "there is no religious dispute to be resolved here, and none was addressed or resolved by the trial court".[25] Yet this statement flies in the face of (1) the trial judge's opinion ("that the defendants Young brought about the separation in order to assume control over the land and money"),[26] (2) evidentiary rulings allowing religious sermons and the like to be admitted into evidence,[27] (3) the allegations contained in paragraph 11(a) of respondents' Complaint,[28] (4) the opening statement of respondents' counsel at trial,[29] and (5) the fact that the property in question was purchased and maintained through donations of money and labor of Church members, has always been titled in the Church, and has been used continuously, openly and faithfully for Church purposes.

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[25] *See* respondents' Brief, dated July 13, 1979, filed with the Michigan Court of Appeals, p. 33.

[26] *See* circuit court opinion, p. 4, at App. 3a.

[27] *See* trial trans. (Book 6, pp. 28-32, 41-43) at App. 1m. Petitioners' objections to the trial court's evidentiary rulings are found at these pages. Objection to the other constitutional matters raised in this petition was not made at trial because they were not in issue and arose only as a result of the trial judge's action following trial. Petitioners asserted constitutional error in their first appellate brief, and have done so throughout the entire appeal process.

[28] *See* App. 6k-7k.

[29] Counsel stated during his opening argument:

> "Your Honor, this project was called Heartpeace Hills. Sometimes it was referred to as the Promised Land. We will show that eventually the parties disagreed in their theological outlook." (*See* trial trans., January 3, 1978, p. 8.)

Respondents attempt to distinguish their Church membership from their joint venture membership by suggesting that they could withdraw from the Church but not from the venture. The untenability of this position is evident, however, when one considers that according to respondents' theory of the case, the Church was to manage the property. Respondents asserted that membership on the Church's Advisory Board was that "measure of control . . . expected in the arrangements for [the] joint venture".[30] Thus, according to respondents' own notion of the case, their participation in Church affairs and, ultimately, their personal religious reasons for leaving the Church, are at the center of the dispute involving the Church's land. The web which respondents claim was constructed undeniably involves Church property, and having created this entanglement, respondents must bear its consequences. The First Amendment mandates that the case be resolved without reference to the underlying doctrinal dispute, *Hull, supra,* requiring respondents to structure relationships involving their individual property so as not to require civil courts to resolve ecclesiastical questions.[31] This they failed to do. As a consequence, the reasons behind respon-

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[30] *See* trans. of proceedings, p. 8, January 3, 1978, and p. 17 of respondents' Brief, dated July 13, 1979, filed with the Michigan Court of Appeals.

[31] *See Wiethoff* v. *St. Veronica School*, 48 Mich App 163, 168 (1973). That case involved a school teacher's complaint against a Catholic school for breach of contract. Plaintiff Wiethoff's contract was terminated after she married a Roman Catholic priest and was excommunicated; the school claimed that the teacher's contract was terminable because Wiethoff no longer remained a practicing Catholic, contrary to the requirements of the contract. The Michigan Court of Appeals ordered a hearing on the merits of plaintiff's claim without reference to doctrinal questions.

dents' disagreement with Church doctrine is a matter totally beyond the trial court's jurisdictional limitations.

A number of neutral principles could have been employed to resolve the instant litigation, consistent with *Hull, supra,* and the requirements of the First Amendment, viz., consideration of: (a) title under which the Church holds the property; (b) respondents' withdrawal from the Church; or (c) the decisions of the Church governing body.

The acreage in litigation was purchased by the Fellowship of Christ Church in 1960. At any time before the religious dispute nine years later, the parties could have modified the terms of the land contract or (eventual) deed under which the Church held title, or amended the corporate charter of the Church to evidence the venture which respondents claim existed. *Cf. Jones* v. *Wolf, supra*. Also, of course, they could have included references to the alleged venture in Church minutes. They did none of these things.

Analysis of the second neutral principle suggested, withdrawal, also would lead to the conclusion that respondents have no claim to the Church's property. Under Michigan law, respondents were free to withdraw from the Church with or without cause, but they cannot take their prior contributions or Church property with them. *Borgman* v. *Bultema*, 213 Mich 684 (1921); *Fuchs* v. *Meisel*, 102 Mich 357 (1894); *Michigan Congregational Conference* v. *United Church of Stanton*, 330 Mich 561 (1951).

The court also could have considered the decision of the Church's governing body without overstepping *Hull*'s boundaries. Respondents never claimed that Church governance violated any provision of law under which the Church was organized; evidence of the Church's "good standing" with the State was admitted by the trial court. The trial judge was obligated to respect the decision of the duly authorized

Church leadership, and title to the property should have remained with the Church.

In sum, the trial court's actions violated the principles enunciated in *Hull, supra,* and constituted an unconstitutionally broad sacrifice of constitutional rights. The First and Fourteenth Amendments guarantee that a state can restrict the free exercise of religion only for compelling secular purposes, and then only by the least drastic means possible. *Cantwell* v. *Connecticut*, 301 U.S. 296 (1940); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). If the trial judge believed that Dr. Young and his wife were guilty of wrongdoing, he could have specifically enjoined them from continuing such actions. In other words, remedies far less intrusive than dissolution and receivership were available.[32]

IV.

MICHIGAN STATUTE (MCLA §450.180) PROHIBITS COURTS OF THAT STATE FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY ABSENT INITIATION OF *QUO WARRANTO* PROCEEDINGS BY THE MICHIGAN ATTORNEY GENERAL.

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[32] *See, e.g., SEC* v. *World Radio Mission, Inc.*, 544 F.2d 535 (1st Cir. 1976) (enjoining religious organization's continued misrepresentation in general public offering of securities; no attempt to seize religious organization). In addition, if persons commit fraud upon the public, under a mantle of religion or otherwise, "penal laws are available to punish such conduct." *Cantwell* v. *Connecticut*, 310 U.S. 296, 306 (1940). *See* also *Village of Schaumberg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980); *Schneider* v. *Irvington*, 308 U.S. 147, 164 (1939); *Intern. Soc. for Krishna Consciousness* v. *Bowen*, 600 F.2d 667, 669 (7th Cir. 1979).

Throughout the appeal process, petitioners have maintained that, apart from due process considerations, the judgment entered by the circuit court is invalid because the Michigan Attorney General was not a party to the proceeding. Michigan statute requires the State's Attorney General to bring *quo warranto* proceedings[33] if dissolution or receivership of a church is sought, *Olesky* v. *Sisters of Mercy*, 74 Mich App 374 (1977). Because the Michigan Attorney General was not a party to the suit, the trial court exceeded its jurisdiction and the judgment is void. This conclusion is also urged by the Attorney General for the State of Michigan.[34]

V.

THE TRIAL COURT ERRED WHEN IT FAILED TO RESOLVE THE CASE UPON THE BASIS OF THE STATUTE OF FRAUDS AND FAILED TO FIND THAT RESPONDENTS DID NOT PROVE THE EXISTENCE OF A JOINT VENTURE TO DEVELOP THE PROPERTY IN ISSUE.

A. Respondents' joint venture claim is barred by Michigan's statute of frauds.[35]

Respondents claim an interest in land admittedly titled in the name of the Church as a result of their alleged joint venture agreement with petitioners. Such agreements are within

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[33] Michigan Court Rule GCR 1963, 715 is to the same effect. Under specifically defined circumstances, Michigan statute and Court Rules permit prosecuting attorneys and citizens to initiate *quo warranto* proceedings. However, none of those circumstances exists in the instant proceeding. See App. 1h.

[34] The motion and brief which the Attorney General filed with the Michigan Supreme Court appear at App. 1n, 1o.

[35] MCLA §566.108, at App. 1i.

the statute of frauds, *Tuttle* v. *Bristol*, 142 Mich 148 (1905); *Raub* v. *Smith*, 61 Mich 543 (1886); *Morrison* v. *Meister*, 212 Mich 516 (1920), requiring respondents to prove the existence of a joint venture by producing a signed contract in writing. As recognized by the trial court, respondents failed to do so:

> "Your case here depends on your oral argreements because it is not in the minutes and it isn't in the three Concepts."[36]

B. The evidence presented by respondents failed to establish a joint venture under the law.

While a joint venture is not subject to precise definition, it is, at the very least, a joint undertaking of two or more persons to carry out a single project for profit. It is a business endeavor in which profits and losses are shared. *Goodwin* v. *S. A. Healy Co.*, 383 Mich 300 (1970); *Hathaway* v. *Royalty Pool, Inc.*, 296 Mich 90 (1941). However, in the instant case, viewing the evidence in a light most favorable to respondents, all that is shown is that respondents and other Church members joined together in a cooperative undertaking to improve their moral and spiritual well-being, not for business motives.[37] This can best be seen by reviewing the record to see (1) those purposes enunciated by respondents for their purchasing lots in Heart-

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[36] *See* trial trans. (Book 4, p. 47).

[37] *Cf. Swan* v. *Ipsas*, 325 Mich 39, 44 (1939):

> "Cases involving nonprofit, social, benevolent or ecclesiastical organizations, in which title to property is in the association . . . are not in point in cases, as here, of joint adventures for profit in which the members own the property as co-tenants."

peace Hills, (2) the manner in which the property was purchased, (3) exactly what was given to support development of the property, by respondents, petitioners and others, and (4) respondents' perception of the terms of the alleged venture.

Respondents repeatedly testified that they purchased their lots as members of the Church for religious reasons.[38]

As to the manner in which the land was purchased, respondents asserted that they enabled the Church to acquire the property by "contribut[ing] funds for the downpayment and for subsequent monthly payments" (Cohoon Complaint, paragraph 5). The evidence adduced at trial showed this to be a complete fabrication. Two of the respondents, along with Dr. Young, loaned funds to the Church for the downpayment on the property, and these funds were subsequently repaid. As to the monthly land contract payments on the property, respondents conceded that the Church made the payments with funds obtained from tithes of the entire congregation.[39] Respondents also admitted that it was their practice to treat their tithes as charitable contributions for which they claimed income tax deductions.[40]

In their Complaint, respondents assert that the alleged joint venture agreement called for venturers to expend time,

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[38] *See* trial trans. (Book 7, pp. 22-23) at App. 1p.

[39] *See* trial trans. (Book 3, pp. 122-125) at App. 1q.

[40] Interestingly, when respondents were first asked on deposition about these matters, they refused to answer the questions posed. It was necessary for petitioners to obtain a court order before respondents divulged this information. *See, e.g.*, petitioners' Motion to Compel Answers to Deposition Questions, September 23, 1977, and Court Order, dated September 28, 1977 (at App. 1r).

money and other resources.[41] Yet, at trial, respondents stipulated that the entire Church congregation labored to develop and beautify the property.[42]

Respondents were required to prove the terms of the joint venture upon which their suit was based. *Stahelin* v. *Souile*, 87 Mich 124 (1891); *Strong* v. *Hercules Life Insurance Co*, 284 Mich 573 (1938); *Hathaway* v. *Porter Royalty Pool, Inc.*, *supra*. However, analysis of the trial transcript compels the conclusion that they failed to satisfy their burden:

(i) respondents could not answer when or how they joined the alleged venture;[43]

(ii) contrary to respondents' claim, the testimony adduced at trial illustrates that respondents purchased their individual lots only, without further expectation;[44]

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[41] Cohoon Complaint, paragraph 7, App. 4k.

[42] *See* trial trans. (Book 2, pp. 97-98) at App. 1s.

[43] *See, e.g.*, the trial testimony of respondent Hughes:

> "Q: *** What was your knowledge or belief as to how new parties were added to the joint venture?
>
> "A: I think my beliefs would differ a bit from Mr. Staugaard's in the fact that intent and deposit was not — until you become an owner of the property you could not be a part of the joint venture . . . I don't think we openly discussed this sort of thing, but this is my belief today." (*See* trial trans. (Book 6, pp. 23-24) at App. 1t.)

[44] Respondent Cohoon was asked by the court what he was to receive for his money:

> "A I'd get this piece of property.
>
> THE COURT: What piece of property? The whole 22 acres?
>
> A No. The Lot in the subdivision.

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(iii) respondents had no conception of the terms of the venture. For example, Mr. Hughes stated that the participants in the venture were required only to "have the right Christian beliefs" and "be willing to submit . . . to the authority of the church".[45]

(iv) respondents' actions belie their claim that they, rather than the Church, owned the property in litigation. Respondent Staugaard testified that, as Treasurer of the Church, he prepared, signed and filed corporate Annual Reports with the State of Michigan, from 1959 through 1968, showing the Church as owner of the property in litigation.[46] Mr. Staugaard also acknowledged that the so-called "common areas" which respondents claim were owned by their business venture had long been exempted from property tax, applied for by the Church, because the land was held and used for religious purposes.

Under respondents' theory of the case, the Church congregation was to spend twenty years paying for and developing the property for respondents' sole benefit — without, Staugaard conceded, ever being advised that respondents, and not the Church, owned the property.[47] It is patently ridiculous to believe that such an agreement was made.

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* * *

"THE COURT: That is all?
A Yes, sir." (*See* trial trans. (Book 6, pp. 58-60) at App. 1u.)

[45] *See* trial trans. (Book 5, p. 49).

[46] *See* trial trans. (Book 4, pp. 47-49, 52-55) at App. 1v.

[47] *See* trial trans. (Book 3, pp. 116-119) at App. 1w.

VI.

CONCLUSION

The judgment entered by the trial court, and, for all practical purposes, unreviewed by either the Court of Appeals or the Supreme Court of Michigan, represents a frightening misuse of judicial power. Having expressly constricted proofs and issues to specific pleadings, the trial court proceeded to make findings of fact never pleaded nor proved and to grant relief, in an almost whimsical manner,[48] which was neither requested nor warranted. Moreover, dissolution of a *bona fide* ecclesiastical institution, and appointment of a receiver over its property, was accomplished as though the Church were nothing more than a corner grocery store unable to pay its creditors, without any appreciation of the resulting abridgment of petitioners' constitutional rights.

No appellate court, thus far, has undertaken an analysis of the extraordinary judicial treatment afforded the Fellowship of Christ Church, its pastor and congregation, despite the unquestionable seriousness of the import of the trial court's decision. This court is respectfully requested to do so.

[48] *See*, e.g., circuit court opinion, p. 4, at App. 3a: "[A]ll would join together in creating a 'Garden of Eden'. All went well according to plan for a period of time until Satan entered the Garden."

BODMAN, LONGLEY & DAHLING

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Dated: April 30, 1981.

APPENDICES A TO W

APPENDIX A

CIRCUIT COURT OPINION
(Civ. No. 77-152370-AZ)
May 16, 1978

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND

ROBERT BOGRETTE, et al,
Plaintiffs

vs. No. 77-152370 AZ

ROBERT C. YOUNG, et al,
Defendants

The Opinion of the Court in the above cause before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan on May 16, 1978.

APPEARANCES:

JOHN A. COOK
Appearing on behalf of the Plaintiffs

ANDREW J. BRODER
Appearing on behalf of the Defendants

[2]

Pontiac, Michigan
May 16, 1978

* * *

JOHN A. COOK: The plaintiffs are ready, your Honor.

ANDREW J. BRODER: Ready, your Honor.

THE COURT: The plaintiffs in this cause advance theories of joint venture, constructive trust, negative reciprocal easement and general plan, coupled with a prayer for an accounting.

The defendants deny the existence of a joint venture and any resulting constructive trust and, therefore, the need for an accounting as well as the creation of any negative reciprocal easements or the existence of any general plan outside the recorded covenants running with the land, asserting the statutes of fraud and limitations and the parole evidence rule as devices to avoid the consideration of oral testimony.

The undisputed facts are that the principal plaintiffs and defendants Robert C. Young and Patricia R. Young were a group of people including some of the plaintiffs whose common interest was a particular Christian belief, and a gathering together to live their lives on the 22 acres of land in litigation. They agreed to live by and be bound by [3] "Christian principles". I might add there was an awful lot of religion in this case but very little Christianity.

In consideration of a price paid each married couple was to have conveyed to them in fee simple a residential lot upon which they would build a house which they would own. They were to worship in common under the spiritual guidance of the defendant, Robert C. Young, in a church building to be located on the 22 acres. They were to share tennis courts, a

swimming pool and recreational and park facilities as a part of the 22 acres, and the lives of all were to be bound together religiously, socially and property-wise with the thought in common that "Christian principles" would be the constant determining factor in their lives. It was agreed that they would form an Ecclesiastical Corporation to be known as the Fellowship of Christ, a now defendant, that would hold legal title to the 22 acres.

This Court is of the opinion that until the time of the disagreement which came about between the defendants and the plaintiffs no one discussed such esoteric questions as property rights, but to the contrary, joined together in mutual applications of money, thought, time and effort and construction materials in a common effort to build a subdivision complete with roads, parks, swimming pool, recreational areas and buildings as well as a church structure.

[4]

All members of the governing board of the defendant church up until the plaintiffs and the Youngs separated were, with the exception of the defendant Robert C. Young, plaintiffs.

The lots in the subdivision were to be sold to individual Christians of spiritual convictions similar to their own, and all would join together in creating a "Garden of Eden". All went well and according to plan for a period of time until Satan entered the Garden. For reasons that are material to this mundane litigation the individual plaintiffs and defendants stopped associating with each other.

The Court is of the opinion that the defendants Young brought about the separation in order to assume control over the land and money held by the church in separate book accounts. The lack of activity by the plaintiffs in the spiritual

aspect left the defendant Youngs in complete control of the corporate defendants.

As an interesting aside, although the Youngs were present throughout the proceedings they did not take the stand in the presence of the Court and the Court did not have the opportunity to examine their candor and demeanor. The Court had to rely upon the deposition of Robert Young, which was introduced into evidence. I might indicate that a careful reading of that deposition leads one to the only conclusion [5] that the testimony of Robert Young was incredible. It was inconsistent. It was unresponsive. It was not truthful.

The by-laws of the corporate defendant, according to the testimony of the pastor, defendant Robert C. Young, provided that the pastor would select the Advisory Board consisting of, as it did, four people, although the written by-laws provided it could have had 12. This Advisory Board would manage the affairs of the church, i.e., the corporate defendant.

At the time of the taking of the deposition of the defendant Young the corporate defendant seemed to consist of the pastor, his wife and their family, and one Janey Jones. It was a church without a congregation. The house that the Youngs lived in was the house that had originally been used from the time of incorporation for church purposes or a meeting of the congregation when the plaintiffs were still associating with the individual defendants. So in point of fact the corporate asset, i.e., the church, was being used in abrogation of the church purpose by the defendant Youngs as their home where they lived together with their children.

There are rules of law which prohibit the Concept under which all the parties originally agreed to be bound. The restriction of the sale of lots to persons because of race, creed or color, as was done in this case, is prohibit- [6] ed by the

Constitution of the United States. The Constitution of the United States further provides for separation of church and state. There is no doubt that a Court cannot interfere in the internal affairs of a church because of this constitutional barrier. However, a careful study of the record in this case can only lead to the conclusion, and this Court reaches this conclusion, that the so-called ecclesiastical corporation is not a church. It it ever was one it is no longer and has not been for many, many years, and has not been in a position to attain its corporate purpose. As a matter of fact, it is not a church but a financial arrangement used by the individual defendants as a subterfuge and fraud on the people of the state and the plaintiffs.

A careful reading of all of the documents introduced into evidence and the testimony of the plaintiffs, and in particular a careful reading of the deposition of the defendant Robert C. Young, leads the Court to the conclusion that the defendant Robert C. Young and his wife intended to subvert gifts of time, energy, money and property to their own use. That they used as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation.

Again, the testimony of the defendant Robert C. Young, represented by his deposition only, is in- [7] credible.

Thoughout the life of the corporate defendant the individual defendants Robert C. Young and Patricia R. Young used the corporate assets as their own, even conveying their own home to the church.

This Court finds as a matter of fact there was a general plan for the development of the 22 acres as a residential subdivision. That in addition to the covenants running to the land which were reduced to writing, the whole area which bisected the two subdivisions recorded as Heartpeace Hills and Heart-

peace Hills No. 2, designated as an "Outlot" on the Buckerfield Exhibit 33 introduced into evidence, and the portion designated "Exception for Church", also unplatted, were to be used in common for recreational purposes by all of the lot owners who were part of this development, plan or scheme.

The statute of frauds and the statute of limitations are inapplicable. First, because a general plan or negative reciprocal easements are exceptions to and avoid the statute of frauds. Although it could be argued the statute of limitations would limit any claim against the corporate entity this Court is convinced that long before the statute tolled the individual defendants Robert C. Young and Patricia R. Young completely frustrated the corporate purpose and were using the assets of the corporation as their own without benefit of dis-[8] solution of the corporation. It had in point of fact ceased to be a church, if it ever was one.

The Court makes the following determinations and will sign an order in accordance with the following opinion. And I might refer counsel to the law of the State of Michigan which provides for the dissolution of corporations to protect minority stockholders. It certainly is applicable in the instant case, in such cases where the corporate purpose cannot be obtained. That is the case of *Holden* v *Lashley-Cox Land Company*, 316 Michigan 478.

The corporate defendant has been and now is being operated for the sole benefit of the individual defendants to the detriment of the plaintiffs, and does not have as its corporate purpose spiritual goals but is in fact set up for the purpose of developing a residential subdivision.

The corporation is therefore dissolved. As a matter of fact, the corporate purpose cannot be attained and was never intended to be attained by the defendants Young.

That the conduct of the defendant officers of the corporation as outlined constitutes a fraud and a breach of trust on the rights of the plaintiffs and justifies a court of equity on the complaint of the plaintiffs to compel restitution of funds improperly taken; to appoint a receiver and to order dissolution of the corporation, because over a [9] period of years the property rights of the plaintiffs have been subverted.

Pursuant to agreement, or rather, not in pursuance of the agreement the subdivision has not been developed.

A judgment shall enter which provides for the imposition of the written covenants introduced into evidence to be affixed to each and every residentially platted lot in the subdivision.

The receiver shall take possession of the corporate assets of the corporate defendant, and in particular assume possession of all of the land which lies between the two subdivisions, Heartpeace Hills and Heartpeace Hills No. 2, as well as the land described in the Buckerfield exhibit as "Exception for Church". The receiver shall sell and dispose of all of the residential lots in the two subdivisions yet unsold.

The land remaining between Heartpeace Hills subdivision and Heartpeace Hills subdivision No. 2 and the 3.24 acres described as "Exception for Church" shall be subject to uses for park purposes of the lot owners in the two platted subdivisions, and shall be bound by identical covenants running with the land which carry out these purposes.

The receiver shall pursuant to law use [10] the proceeds of the sale of the residential lots to carry out the original purpose of the defendants Young and the plaintiffs in providing recreational facilities to the extent possible on the two common areas described, including tennis courts and a swimming pool.

The receivership obviously should be subject to any lawful claims that would exist against the corporation in being, including any claims that rightfully should be present when confronted by dissolution of a corporation. The Court has in mind as one item the proceeds of the sale of the defendants Youngs' home. Although they do not have clean hands this a court of equity. The Court is of the opinion that there should be appropriate allocation made so that ultimately the receiver in carrying out the instructions of the Court should make a determination, or present to the Court for determination an allocation as to what the claim of the Youngs would consist of and the extent to which it should be allowed, contrasted with the funds that are left that are needed to provide for the recreational facilities above described.

This judgment is based upon the facts and the situation as of May 16, 1978, the Court having viewed the premises carefully with both counsel.

The Court shall retain jurisdiction. A receiver will be named by the Court at the time the judgment [11] is presented for signing.

The Court will sign an order to that effect.

* * *

APPENDIX B

Circuit Court's Amended Findings
(Civ. No. 77-152370-AZ)

November 22, 1978

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND

ROBERT BOGRETTE, et. al.,
Plaintiffs,

vs.

ROBERT C. YOUNG, et. al.
Defendants.

Honorable
James S. Thorburn
Case No.
77-152370-AZ

JOHN A. COOK (P12177)
Attorney for Plaintiffs

ANDREW J. BRODER (P23051)
Attorney for Defendants

AMENDMENT OF FINDINGS OF FACT

At a session of said Court held in the Court House Tower, in the City of Pontiac, Oakland County, Michigan, on November 22, 1978.

PRESENT: THE HONORABLE JAMES S. THORBURN, Circuit Court Judge.

Plaintiffs' Motion To Correct Opinion having come before the Court for hearing, and the Court having considered the arguments of counsel, NOW, THEREFORE, pursuant to GCR 1963, 517.2,

IT IS HEREBY ORDERED that the Opinion of the Court, rendered in this matter on May 16, 1978, be and is hereby amended in the following respects:

1. The statement appearing as follows in the transcript:

> "It was agreed that they would form an Ecclesiastical Corporation to be known as Fellowship of Christ, a now defendant, that would hold legal title to the 22 acres",

is amended to state as follows:

> "It was agreed that they would form an Ecclesiastical Corporation, to be known as the Fellowship of Christ, a now defendant. Said corporation did ultimately hold legal title to the 22 acres."

2. The statement appearing as follows in the transcript:

> "The land remaining between Heartpeace Hills subdivision and Heartpeace Hills subdivision No. 2 and the 3.24 acres described as "Exception for Church" shall be subject to uses for park purposes of the lot owners in the two platted subdivisions, and shall be bound by identical covenants running with the land which carry out these purposes,"

is amended to change the acreage from 3.24 to 3.27 acres.

JAMES S. THORBURN
Circuit Court Judge

APPENDIX C

Circuit Court Judgment
(Civ. No. 77-152370-AZ)

November 22, 1978

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND

ROBERT BOGRETTE, et. al.,
Plaintiffs,

vs.

ROBERT C. YOUNG, et. al.,
Defendants.

Honorable
James S. Thorburn
Case No.
77-152370-AZ

JOHN A. COOK (P12177)
Attorney for Plaintiffs

ANDREW J. BRODER (P23051)
Attorney for Defendants

JUDGMENT

At a session of said Court held in the Court House Tower, in Pontiac, Michigan, on November 22, 1978.

PRESENT: THE HONORABLE JAMES S. THORBURN, Circuit Court Judge.

This case having been tried before the Court and the Court having rendered its opinion, NOW, THEREFORE, in accord-

ance with said opinion, the following Judgment is hereby rendered:

1. IT IS HEREBY ORDERED AND DECREED that lots 1 through 11 of Heartpeace Hills subdivision, the plat of which is recorded in Liber 113, pages 39 and 40 of Plats, Oakland County Records, and Lots 12 through 21 of Heartpeace Hills No. 2 subdivision, the plat of which is recorded in Liber 129, page 7 of Plats, Oakland County Records, are all declared to be subject to that certain Restriction Agreement, recorded in Liber 6861, pages 139 through 150 of Oakland County Records, with the exception of paragraph 22 of said Restriction Agreement, which is hereby declared to be in violation of Article I, Section 2 of the Michigan Constitution of 1963, and Article 5, Section 502 of the Michigan Civil Rights Act, being Section 37.2502 of Michigan Compiled Laws of 1948, and is therefore null and void. Said Restriction Agreement, is hereby declared to be binding upon and for the benefit of all present and future owners of said lots, and their respective heirs, successors and assigns, as covenants running with the land.

2. The land lying between Heartpeace Hills Subdivision and Heartpeace Hills No. 2 subdivision, described as:

> Land in the East 1/2 of the Southeast 1/4 of Section 9, T. 3 N., R. 11 E., Avon Township, Oakland County, Michigan, commencing at the Southeast corner of said Section 9, thence North along the East line of said Section 9, 1076.78 ft. to the point of beginning; thence West 675.14 ft; thence N 0° 31 ' 30 " E, 198.89 ft.; thence East 673.32 ft. to the East line of said Section 9, thence South along said line 198.89 ft. to the point of beginning.

and the land at the Southeast corner of Heartpeace Hills, described as:

Land in the East 1/2 of the Southeast 1/4 of Section 9, T. 3 N., R. 11 E., Avon Township, Oakland County, Michigan, commencing at the Southeast corner of said Section 9; thence North along the East line of said Section 9, 299.50 ft., to the point of beginning; thence N 89° 23' W, 278.08 ft.; Thence N 3° 53' W, 35.64 ft.; thence S 89° 27' 30"W, 159.92 ft; thence North 167.59 ft.; thence Northerly along a curve to the left (radius 65 feet, long chord of N 9° 54' 35" E. 104.98 feet) a distance of 122.20 feet; thence Northerly along a curve to the right (radius 60 ft., long chord of N 25° 30' 19" W., 37.96 ft.) a distance of 38.62 ft.; thence East 438.66 ft. to the East line of said Section 9; thence South along said line 342.28 ft. to the point of beginning.

and the improvements now or hereafter erected on said parcels, are declared to be, and are hereby dedicated and reserved, for the exclusive use and enjoyment of the present and future owners of the lots of each of said platted subdivisions, and their respective heirs, successors and assigns, for recreational and park purposes, and said land shall be bound by this dedication and reservation, and by the Restriction Agreement recorded in Liber 6861, Pages 139 through 150, Oakland County Records, to the extent it does not conflict with said recreational and park uses, as perpetual easements and covenants running with said land.

3. A Receiver, to be named by this Court in a separate Order, shall be appointed for the purpose of completing the development of said parcels of park and recreational property. This shall include completion of development of the park and recreational property between the two platted subdivisions as a park and the construction of tennis courts and a swimming pool. The Receiver shall assume possession and

control of the said park and recreational parcels, and all improvements thereon, and all of the lots in Heartpeace Hills and Heartpeace Hills No. 2 that are presently held in record title by THE FELLOWSHIP OF CHRIST, an ecclesiastical corporation, and shall sell and dispose of all of said lots and use the net proceeds thereof for the completion of said recreational and park properties. The term "net proceeds" means the amount remaining after the payment of the receiver's costs and fees and an allocation to DR. ROBERT C. YOUNG and PATRICIA R. YOUNG as compensation for their residence, all of which shall be subject to the approval of this Court.

4. The Receiver to be appointed as aforesaid shall take possession and control of all of the properties, real and personal, of said corporation, and the financial and business records thereof, and shall marshall and dispose of all of the same. The proceeds of all of such properties, shall be used to pay all lawful claims against said corporation. All persons having an interest in the property of said corporation or who have conveyed, donated or contributed substantially to the funds or property of said corporation, may intervene in the liquidation proceedings for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to law.

5. The receiver must file a complete accounting on January 1 and July 1 of each year and file a final accounting by October 1, 1979, or further order of the Court.

6. THE FELLOWSHIP OF CHRIST, an ecclesiastical corporation, is hereby dissolved.

7. Plaintiffs are awarded costs in accordance with the statute.

8. This Court retains jurisdiction in this matter for the purpose of implementing this Judgment.

JAMES S. THORBURN
Circuit Court Judge

APPENDIX D

Michigan Court of Appeals Opinion
(Civ. No. 78-5213)

January 28, 1980

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT and JUDITH BOGRETTE, et. al.,
Plaintiffs-Appellees-
Cross-Appellants,

vs.

No. 78-5213

ROBERT C. and PATRICIA R. YOUNG, et. al.,
Defendants-Appellants-
Cross-Appellees.

BEFORE: Riley, P.J., and R. B. Burns and D. E. Holbook, Jr., JJ.

PER CURIAM

Both parties appeal as of right certain findings of the trial court. While they raise a total of seven issues only two merit discussion. These relate to the trial court's finding of a joint venture between the parties for development of the subdivi-

sion and to the finding that the common property of the subdivision was subject to reciprocal negative easements.

In January of 1960, the congregation of the Fellowship of Christ Church, of which the plaintiffs and defendants herein were members, sought a new place in which to meet and worship. Defendant Robert Young noticed an advertisement in a local newspaper offering for sale a 22-acre farm located in Rochester, Michigan. Subsequent meetings took place between several of the plaintiffs and defendants to discuss the purchase of the land. These meetings were attended by plaintiffs Staugaard, Hughes, and Charles Cohoon and defendants Young. At these meetings, defendant Robert Young initiated a discussion of his idea to develop the land as a residential subdivision. After several meetings, the families present agreed to raise $6,000 necessary for a down payment on the property, and the church agreed to act as developer of the subdivision. Payments on the land contract, eventually entered into, for purchase of the land were to be made out of proceeds of individual subdivision lot sales. If lot sales were not sufficient to meet the land contract payments, it was agreed that the church would underwrite the payments as a loan to the venture. Purchase of the property was made on May 31, 1960.

Pursuant to the alleged agreement to jointly develop the property, designated as "Heartpeace Hills," defendant Robert Young drafted a "Concept for Heartpeace Hills." The concept designates the church as sponsor of the new community and specifies the manner in which interested persons may purchase lots in the development. Paragraph 4 of Section VII also provides that any residential structures and property must be maintained within the guidelines of a "Restrictive Agreement adopted by the Advisory Board and ratified by the Fellowship of Christ." This "Concept" was given to all of the plaintiffs prior to their purchase of land in the subdivision. Deeds for the land conveyed to plaintiffs Staugaard, Hughes

and Helland and to defendants Young also referred to general restrictions to which their land was made subject.

Plaintiffs alleged in part that payments for individual lots were also intended to secure for them the right to use the subdivision's common property. Title to such common property was said to be intended for vesting in a Homeowner's Association, as stated in the Restriction Agreement. In addition, the various plaintiffs contributed their labor to development of the area.

In 1969, a dispute over the theological foundations of the church caused the plaintiffs to withdraw from its membership. The plaintiffs did not, however, sell their homes or cease their work in developing the community.

In July of 1975, the church congregation decided to sell the property held under the church's name, pursuant to its plan to relocate. In furtherance of this plan, the church petitioned Avon Township for a division of the land into four plats suitable for sale. The church received several offers for purchase of the land and church building. In response to the attempted sale, the plaintiffs initiated this action, seeking to prevent the sale and to require that the subdivision be completed as stated in the plan for development.

Defendants claim that agreements showing the presence of a joint venture or reciprocal negative easements are subject to the statute of frauds, and must be in writing to be valid. We disagree. Several cases in this Court have concluded that certain circumstances may preclude application of said statute.

In *Arndt* v *Bos*, 83 Mich App 484; 268 NW2d 693 (1978), the statute of frauds was found not to prevent the plaintiff's action seeking specific performance of an oral contract to transfer an interest in land. And in *Koffman* v *Mathews*, 352 Mich 390; 89 NW2d 756 (1958), the statute of frauds was

found not applicable to an oral agreement to share profits from the development of land, where the oral contract was not for the sale of an interest in land.

Moreover, the part performance doctrine is available to remove the disputed agreement from the statute of frauds under proper circumstances. *Miller Glass Co, Inc* v *Kushmaul*, 13 Mich App 346; 164 NW2d 390 (1968). In *Zaborski* v *Kutyla*, 29 Mich App 604, 607; 185 NW2d 586 (1971), this Court stated:

> "The law in Michigan is clear that partial performance of an oral contract to convey an interest in land may remove that contract from the operation of the statute of frauds. *Boelter* v *Blake* (1943), 307 Mich 447; *White* v *Lenawee County Savings Bank* (1941), 299 Mich 109; *Miller Glass Company, Inc* v *Kushmaul* (1968), 13 Mich App 346. Possession and improvements in regard to the property may remove it from the statute."

The improvements provided by the plaintiffs herein dictate a similar result. In this case plaintiffs took possession and improved the common property which the church desired to divide and sell. Thus, as in *Zaborski*, the trial court was correct in stating that the statute of frauds was no defense.

The basic rule relating to the element and effect of reciprocal negative easements was stated in *Lanski* v *Montealegre*, 361 Mich 44, 47; 104 NW2d 772 (1960), when the Supreme Court held:

> "Both parties agree upon the definition and effect of a reciprocal negative easement. There must have been a common owner of the related parcels of land, and in his various grants of the lots he must have included some restriction, either affirmative

> or negative, for the benefit of the land retained, evidencing a scheme or intent that the entire tract should be similarly treated. Once the plan is effectively put into operation, the burden he has placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. In this way those who have purchased in reliance upon this particular restriction will be assured that the plan will be *completely* achieved. See *Sanborn* v *McLean*, 233 Mich 227 (60 ALR 1212); *Denhardt* v *De Roo*, 295 Mich 223; *Cook* v *Bandeen*, 356 Mich 328."

Thus, where reciprocal easements arise by operation of law, they need not be in writing. The only writing necessary for establishment of a reciprocal negative easement is that establishing the original negative easements upon the property conveyed. MCL 566.106; MSA 26.906.

The only reference to rights in common areas within the Restriction Agreement herein is on its first page, wherein it states: "in consideration of the agreements of the others and of the plan and purpose of said subdivision." This reference to the plan and purpose of the subdivision points out the "Concept for Heartpeace Hills." In paragraph II of the latter document, it is stated:

"To better relate the individual home to its neighborhood community environment:

"* * * Each of the two micro-neighborhoods is located on a cul-de-sac. South Hill neighborhood has 11 homesites as does the North Hill neighborhood.

"* * * *The spirit of the community is strengthened by sharing certain desirable facilities such as a tennis court, swimming pool, playground equipment, a small stream, park, and the meeting place for the Church.*" (Emphasis supplied.)

To satisfy the statute of frauds a writing or memorandum must be complete in itself, and must not rely upon parol evidence to explain its terms. *Gedvick* v *Hill*, 333 Mich 689; 53 NW2d 583 (1952). However, Michigan courts have indicated a disposition to liberalize the formal writing requirements, *Klymyshyn* v *Szarek*, 29 Mich App 638; 185 NW2d 820 (1971), and will not require the memorandum to have the detail of a formal contract. *Fothergill* v *Press*, 361 Mich 666; 106 NW2d 215 (1961). Under these standards, the duties required by the reciprocal negative easements are apparent. Although there is not great detail as to the specific requirements for maintenance of the common property, it is clear that certain "common" areas were at least to be reserved for the use of all residents of Heartpeace Hills. The attempted division and transfer of the common areas for development as individual residences contradicts this restriction. Hence, the trial court correctly found reciprocal negative easements, barring the residential development and transfer of the common area.

As to the remaining issues raised by the parties we find same to be without merit.

Affirmed. No costs. Neither party having prevailed in full.

APPENDIX E

MICHIGAN COURT OF APPEALS
DENIAL OF REHEARING

March 20, 1980

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the twentieth day of March in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable DOROTHY COMSTOCK RILEY, Presiding Judge. ROBERT B. BURNS, DONALD E. HOLBROOK, JR., Judges.

ROBERT and JUDITH BOGRETTE,
et al,

Plaintiffs-Appellees,
Cross-Appellants,

vs.

Docket #78-5213
L.C. #77 152370 AZ

ROBERT C. and PATRICIA R. YOUNG,
et al,

Defendants-Appellants,
Cross-Appellees.

In this cause an application for rehearing of this Court's opinion issued January 28, 1980 is filed by defendants-appellants, cross-appellees, and an answer in opposition

thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 25th day of March in the year of our Lord one thousand nine hundred and eighty.

(s) [illegible]
Clerk

APPENDIX F

MICHIGAN SUPREME COURT ORDER
(Civ. No. 64990)

December 3, 1980

A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 3rd day of December in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable MARY S. COLEMAN, Chief Justice, THOMAS GILES KAVANAGH, G. MENNEN WILLIAMS, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., Associate Justices.

ROBERT and JUDITH BOGRETTE,
et al,
Plaintiffs-Appellees,

vs.

SC: 64990
ROBERT C. YOUNG, et al, COA: 78-5213
Defendants-Appellants, LC: 77-152370AX

and

DAVID and DEBORAH EVANS,
Defendants-Appellees.

On order of the Court, the application for leave to appeal by defendants-appellants and the application for leave to appeal as cross-appellants by plaintiffs-appellees are considered, and they are DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN – ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 3rd day of December in the year of our Lord one thousand nine hundred and eighty.

(s) Corbin R. Davis, Clerk.

APPENDIX G

UNITED STATES SUPREME COURT ORDER
(No. A-722)
February 23, 1981

SUPREME COURT OF THE UNITED STATES

NO. A-722

ROBERT C. YOUNG AND PATRICIA R. YOUNG, ET AL.,

Petitioners

v.

ROBERT BOGRETTE AND JUDITH BOGRETTE, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby extended to and including May 2, 1981.

(s) Potter Stewart
Associate Justice of the Supreme
Court of the United States

Dated this 23rd
day of February, 1981.

APPENDIX H

MCLA § 450.180
(Governing Dissolution of Ecclesiastical Corporations)

Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in section five [5] of this act. Such articles may contain, among other things, specified in section one hundred seventy-nine [179] of this act, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corportion being so incorporated. Such society shall not, however, by its articles, by-laws or system of discipline, permit or encourage the teaching of immoral practices or conduct or anything that is contrary to public policy; that violates the sanctity of the marital relations; that will prohibit any member of such society from appealing to the courts of the United States or the courts of this state for the enforcement of personal or property rights; that the by-laws and rules of discipline shall not be subject to civil law or decree; that encourages violating or disregarding any law of the United States or of this state. No provision shall be made in such by-laws or articles permitting such corporation to receive, accept, acquire or endeavor to secure property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline; that will permit any individual as such and not as an official of said society to acquire and hold the property thereof in his own name, or which permits any official to dictate and construe the rules of discipline or by-laws of such society without the approval of the directing board thereof, or require that such by-laws and rules be approved by him before becoming effective. When-

ever proceedings in the nature of quo warranto have been or may hereafter be brought against any association or corporation organized or doing business in this state as a religious or ecclesiastical body, and when it shall appear in the information that such association or corporation has exceeded its powers, misused its franchises and privileges, committed any fraud or deception, has been guilty of any misapplication of funds or property, has secured property or donations through fraud or misrepresentation, has acquired or used property illegally, has been guilty of propagating or teaching immoral or vicious principles or doctrines or has otherwise violated the laws of this state or the United States, the attorney general may, in such proceedings, or in separate proceedings, apply to the same or any other circuit court for a receiver for the property and effects of such association or corporation, and in all such cases the court shall appoint a receiver in like manner and with like effect and powers as in insolvency proceedings as provided for the judicature act of nineteen hundred fifteen [1915] and any amendments thereto. All persons having any interest in the property of such association or corporation or who have conveyed, donated or contributed substantially to the funds or property of such association or corporation, may intervene in such proceedings for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to the rules and practice of the court. Any property, goods or money of such association or corporation, or held in trust by or for it, and not claimed or distributed to the creditors or other claimants whose claims have been duly proved in the proceedings herein authorized, shall escheat to the people of this state and upon the winding up of the receivership shall be conveyed to the state board of escheats, and shall be disposed of by such board as now provided by law for other escheated property.

APPENDIX I

MCLA §566.108
(Statute of Frauds)

Every contract for the leasing for a longer period than one [1] year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized in writing: Provided, That whenever any lands or interest in lands shall be sold at public auction and the auctioneer or the clerk of the auction at the time of the sale enters in a sale book a memorandum specifying the description and price of the land sold and the name of the purchaser, such memorandum, together with the auction bills, catalog or written or printed notice of sale containing the name of the person on whose account the sale is made and the terms of sale, shall be deemed a memorandum of the contract of sale within the meaning of this section.

APPENDIX J

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 4

(April 27, 1978)

CROSS-EXAMINATON OF
RESPONDENT KENNETH STAUGAARD

* * *

[3]

MR. BRODER: Your Honor, before I begin questioning the witness one bit of clarification is in order. It is my desire to question this witness on some of the Complaints that have been filed in this action. Now, the court file will show approximately six or seven Complaints that have been filed on behalf of all of the plaintiffs. Originally in this action a Complaint for a temporary restraining order was filed. Subsequent to that there was an Amended Complaint, a Count II, so to speak. Then a Second Amended Complaint alleging some sort of anticipatory breach of contract. At that point in this Court's absence Judge Kuhn granted plaintiff's motion to amend on a third occasion. So there is a court order allowing a Third Amended Complaint [4] in this action.

Now, subsequent to that time plaintiffs filed yet another Complaint denominated Complaint of Charles and Carol Cohoon. The plaintiffs took the position that that Complaint, although filed only by the name of one of the plaintiffs, represented the Complaint of all of the plaintiffs in this action.

THE COURT: Well that cannot be.

MR. BRODER: Now, before the commencement of trial in January, I believe, the Court asked if by way of stipulation counsel for plaintiffs and defendants could agree that the Cohoon Complaint represented the claims of the plaintiffs in terms of what they were relying on in this action. A stipulation was filed and the Court did sign an Order allowing that stipulation, dated December 22, 1977. I stand corrected. It was not in January. As part of the stipulation —

THE COURT: Forget the stipulation. What did the Order say?

MR. BRODER: The Order simply reads "So ordered." I think a word of explanation —

THE COURT: What does the Order say? The stipulation is incorporated by reference.

MR. BRODER: The Order states that the plaintiffs incorporate or adopt the Cahoon Complaint as theirs.

Now, I have expressed to Mr. Cook, and I [5] wish to do so to the Court now, that by entering into this stipulation —

MR. COOK: I object. I don't think —

MR. BRODER: It is not my intention to preclude myself from cross-examining any plaintiff on any claims that were made in the previous Complaints. I believe paragraph 5 of this stipulation speaks to that issue. What I want to do, your Honor, is question this witness on some prior Complaints, at least the Third Amended Complaint allowed by Judge Kuhn. I thought rather than start in doing that the record ought to be clear as to what the status of the file is.

THE COURT: Does that complete your argument?

MR. BRODER: Yes, it does, your Honor.

MR. COOK: Your Honor, I object to that procedure on the grounds of materiality. We have a single Complaint before the Court. We entered into the stipulation. There is no possible materiality in any other Complaints. They were consolidated in precise factual claims of the plaintiffs which is

before the Court. It is for the Court to determine the legal conclusions to be drawn from those. We rely on no other facts and state the facts. The stipulation speaks for itself. The whole purpose of consolidating these matters into one Complaint was to avoid this morass of going back and talking about things that have been alleged and re- [6] refined and built into the final Complaint. It was the whole point, to narrow this down so we would not be here for weeks talking about immaterial matters. Some things are not at issue in this case. We have refined this down to the simple facts that we allege of a joint venture, negative reciprocal easement and a contract. Nothing beyond that has any materiality.

THE COURT: There is no question you are correct, with a couple of exceptions. One is that when a Complaint is certified and filed by a lawyer, the lawyer is subject to disciplinary action, obviously, if he certifies these facts as having been true. You have to assume, and the law requires he has discussed and investigated the facts, and usually his source of information is the client.

Now, there is no question it would be a denial of due process if you did not permit Mr. Broder to cross-examine and to touch on the credibility of a witness and to impeach a witness by contrary statements if they were made. As far as trying to prove his case or limiting your prayer for relief by a prior Complaint, he cannot do that. You are both bound for the relief that the plaintiffs are going to get by that last Complaint. And you are also bound, I might add, on the facts you intend to prove by that last Complaint.

APPENDIX K

COMPLAINT OF CHARLES AND CAROL COHOON

(September 16, 1977)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

ROBERT BOGRETTE, et al.,
Plaintiffs,

vs. No. 77 152 370 AZ

ROBERT C. YOUNG and PATRICIA A. YOUNG, his wife and JANE E. JONES, and FELLOWSHIP OF CHRIST CHURCH, an Ecclesiastical corporation,
Defendants.

_____/

JOHN A. COOK (P12177)
Attorney for Plaintiffs

COMPLAINT OF CHARLES AND CAROL COHOON

NOW COME CHARLES and CAROL COHOON, hereinafter called Plaintiffs, by and through their attorneys, PAUL E. FITZSIMMONS and KENNEY, CHAPMAN, COOK, PRINGLE, DeAGOSTINO & MILLER, and for their Complaint, state as follows:

Plaintiffs incorporate by reference Counts I, II and III of the Amended Complaint heretofore filed in this action and further state as follows:

1. In 1958, Plaintiffs were associated with other plaintiffs in this action, namely, ROBERT BOGRETTE and JUDITH BOGRETTE, his wife, (hereafter called "the BOGRETTES"), JOHN T. HUGHES and BERNICE E. HUGHES, his wife, (hereafter "the HUGHES"), KENNETH STAUGAARD and ELIZABETH J. STAUGAARD, his wife, (hereafter "the STAUGAARDS"), as well as Defendants, ROBERT C. YOUNG and PATRICIA R. YOUNG, his wife, (hereafter "the YOUNGS"), and certain others, as a congregation, meeting for religious services and activities under the auspices of The Fellowship of Christ Church, a Michigan ecclesiastical corporation, which had been formed by them in September of that year.

2. The initial meetings and activities of said church congregation were held in temporary quarters in the City of Rochester, Michigan, but through discussions and mutual expressions among them it became their mutual desire and decision that more suitable and permanent quarters be obtained.

3. In 1960, it came to the attention of Plaintiffs and said other congregation members that a certain tract of property in a rural area of Avon Township, consisting of approximately 22 acres with a large farm house, barn and outbuildings, could be purchased, but could only be purchased as a whole and not merely in that part containing said structures. This being the case, Plaintiffs and the HUGHES, STAUGAARDS and YOUNGS participated in meetings and discussions, during or as a result of which each expressed to the others a desire and objective to create for themselves, and for others who might later join them, a residential community development, for which said church, The Fellowship of Christ, would be availed of and controlled by them as both the developer of the property and a center for religious and other community activities.

4. To accomplish said desire and objective, the Plaintiffs and said other congregation members began holding discussions and taking actions directed towards its fulfillment, and in doing so formed by express agreement or by agreement implied by their actions, a joint venture among themselves, which was jointly supported and controlled by them, both directly and also indirectly through said church developer. The members of the joint venture initially consisted of Plaintiffs and the HUGHES, STAUGAARDS and YOUNGS and any others who would, with them, "settle the land of Heartpeace Hills", that is, purchase lots, build homes and create there a Christian community. Such joint venturers intended to benefit from direct participation in the creation of such a community, and from the results of ownership and improvement of the property.

5. In furtherance of the said objectives of said joint venture, Plaintiffs and the other joint venturers arranged for The Fellowship of Christ to acquire said tract of land in Oakland County, Michigan, described particularly in Counts I, II, and III hereof and further depicted as the "development" in the drawing attached hereto as Exhibit A, and to enable it to do so they contributed funds for the down payment and for subsequent monthly payments. Shortly after purchasing said property, to give written expression to their joint venture contract and the objectives thereof, Plaintiffs and other congregation members, including particularly OLAF S. HELLAND and EMERIN HELLAND, his wife (hereafter "the HELLANDS") and the HUGHES, STAUGAARDS and YOUNGS, formulated and agreed to a document entitled "Concept for Heartpeace Hills", a copy of which is attached hereto as Exhibit B. Said document refers to the development of subdivisions and clearly reserves the adjacent common areas for the mutual use and enjoyment of the owners of lots in the two subdivisions.

6. Of the particular uses of the common areas described in said concept document, the following have already been installed and developed and have been devoted to mutual and regular use by the owners of lots of both subdivisions: a small stream, park, meeting place for the church and a playground. The other two uses agreed to therein, i.e., the tennis court and swimming pool, have not yet been installed. Said stated particular uses are not exclusive: for example, a decorative rock garden and a bridge over the stream have also been installed.

7. To accomplish the agreed designs and objectives of their joint venture, Plaintiffs and said other joint venturers contributed labor, equipment, funds and other resources to the grading and other improvement of the said land, and cause the same to be platted into two subdivisions (Heartpeace Hills and Heartpeace Hills No. 2) with common areas reserved for their mutual use and enjoyment, all as depicted in Exhibit A, wherein the common areas are the 2.99 acres between the subdivisions and the 2.53 acres adjoining Heartpeace Hills Subdivision. It was further contemplated and agreed by said joint venturers that the proceeds of sales of the lots of said subdivisions would be used, in addition to other funds to be raised, to pay for development of the subdivisions, including all amenities intended to be a part thereof.

8. Subsequent to the adoption of said concept document, the joint venturers drafted and executed the Restriction Agreement, dated September 21, 1964, which is referred to in Counts I, II and II hereof. Said Agreement further defines the joint venture agreement of the parties and incorporates by reference the said concept document, Exhibit B. Said Agreement sets out particular mechanisms and procedures by which the said joint venturers agreed to control and use the development project for their mutual benefit and profit. Although said Restriction Agreement on its face refers only to

the Heartpeace Hills, its provisions, or the provisions of an identical agreement to be adopted later, were intended also to govern the Heartpeace Hills Subdivision, as indicated in Article VII 4. of the Concept for Heartpeace Hills.

9. In further fulfillment of the objectives of the joint venture, the said joint venturers caused the Fellowship of Christ to deed over to Plaintiffs and the HELLANDS, HUGHES, STAUGAARDS and YOUNGS separate lots of the subdivision, which they thereupon developed as home sites for their respective families, requiring great expense, investment and labor of each of their respective sites, and they caused said church, as developer, to retain the common areas and excess lots in its name but for the benefit of all the individual joint venturers who were lot owners, as well as for those who later became lot owners. ROBERT BOGRETTE and JUDITH BOGRETTE, his wife, and WILLIAM CUPPY and TRACIE CUPPY, his wife, Plaintiffs herein joined said venture after the drafting of said concept document and Restriction Agreement, read and adopted the same, were accepted by the other joint venturers, bought lots in the said subdivisions, and participated in the mutual support and development of said property and joint venture.

10. In addition to being one of the joint venturers in said project, Defendant, ROBERT C. YOUNG, also acted as pastor and an officer of the Fellowship of Christ. As such officer and joint venturer, he assumed, he was obligated by fiduciary duty and by contract in favor of Plaintiffs:

(a) To adhere to religious doctrines already accepted by the other joint venturers to the extent that they affect the financial and property interests of the venturers,

(b) To create and maintain a peaceful and agreeable atmosphere conducive to the further

development of the project as a whole, and

(c) To do nothing that would destroy or impair the development and completion of the project in a manner compatible with said written contract and the mutual desires of all the venturers.

PATRICIA R. YOUNG, Defendant and wife of ROBERT C. YOUNG, was, as a joint venturer, bound by the same contractual and fiduciary duties to Plaintiffs. Defendant, JANE C. JONES, is an elder and officer of said church and member of its congregation and as such is bound by the same duties.

11. Plaintiffs have always performed and abided by said contractual and fiduciary obligations but Defendants, ROBERT C. YOUNG, PATRICIA R. YOUNG and JANE C. JONES, and also through their actions and influence, The Fellowship of Christ, have breached and publicly threatened to breach the same in the following ways, and in other ways not yet known to the Plaintiffs:

(a) They have radically changed or tried to change the mutually accepted doctrine and practice of the Fellowship of Christ by suggesting that all the venturers deed over to the church their lots and homes and other possession in said two subdivisions, suggesting that the joint venturers with school-age children withdraw them from the public school and enroll them in a private church school to be formed, declaring PATRICIA A. YOUNG to have special authority over the government of the church and over the other joint venturers in their religious and personal practices, and requiring that the joint venturers submit totally to the authority and guidance of the YOUNGS; thereby creating a hostile and totally unacceptable atmosphere and environment in the church, subdivisions and community threat-

ening to destroy the spirit and objectives of the venture. Finally, they submitted to Plaintiffs and the other joint venturers an ultimatum that they must accept the authority and doctrines, religious and secular, of the YOUNGS, including the foregoing declarations and terms, by a certain date, or be unwelcome in the church.

(b) They have sold and attempted to sell certain lots and parcels in a manner not contemplated or allowed by the joint venture agreement,

(c) They have used the proceeds of the sales of said lots, and other assets of the venture held by the church, for their own purposes and benefit and for uses and purposes not benefitting the joint venturers as a whole, and have failed to apply them to the completion and maintenance of the development; they have allowed the development to remain in an uncompleted state and have allowed portions to be misused and to deteriorate.

(d) They have caused The Fellowship of Christ to file a petition with the Township of Avon for the division of a single 2.53 acre parcel into four (4) sections for sale to third persons unknown to the Plaintiffs and other joint venturers, all of which will deprive the joint venturers of the use and enjoyment of the parcel and its structures in common.

(e) They have caused The Fellowship of Christ to enter into a Listing Agreement or Agreements with a real estate brokerage firm for the public sale of said 2.53 acre parcel and the 2.99 acre "outlot" parcel held for the use and enjoyment of the venturers in common, and the various subdivision lots which are held in the name of said church but for

the benefit of the joint venturers and other lot owners.

(f) They have purchased, or caused The Fellowship of Christ to purchase, two large moving vans, and have publicly declared their intention, and do intend to use the same to transport property of the venture to the Province of British Columbia, Canada, where it will be totally beyond the reach and enjoyment of the Plaintiffs and other joint venturers, except the YOUNGS, and to invest, use, or spend the funds of the venture, including proceeds of said sales of joint venture property, in that Province and for their own purposes and support, rather than expending them for the completion and maintenance of the said subdivisions.

12. Plaintiffs are informed and believe that LEO W. BURTON and DAVID L. EVANS and DEBORAH EVANS, his wife, who have been joined as Plaintiffs in this action, are owners of lots in said subdivision, by virtue of purchase from The Fellowship of Christ (in the case of LEO BURTON) and from an original party to said joint venture who decided to sell and move off the land due to personal circumstances (in the case of Mr. and Mrs. EVANS). Plaintiffs desire that the interest of said persons be determined and that they and their property share in the benefits of any judgment awarded by this Court. Plaintiffs and all of the other lot owners in said subdivision, with the exception of The Fellowship of Christ, constitute one-half of the owners of Heartpeace Hills and Heartpeace Hills No. 2 and are in the process of forming an incorporated association to take assignment pursuant to paragraph 20 of said Restriction Agreement and of an identical restriction agreement to be executed in regard to Heartpeace Hills No. 2. The purpose of the Plaintiffs in this action in forming said association is to provide a feasible means of completing and

maintaining the subdivisions in view of the virtual abandonment by The Fellowship of Christ of its role and duty as developer under the Agreement.

WHEREFORE, Plaintiffs pray that this Court exercise its powers and discretions in law and equity for the entry of judgments and orders in favor of Plaintiffs, the other joint venturers and the other present and future owners of lots in said subdivisions, and against the Defendants, including:

(a) Injunctive relief to prevent the sale of property of The Fellowship of Christ held for the benefit of the Plaintiffs and the other joint venturers, and to prevent investment and use of funds and assets of said church and the joint venture contrary to the purposes and agreements of said joint venture;

(b) Determination and entry of declaratory judgment of the rights of Plaintiffs, other joint venturers and other present and future lot owners in and to the property described in Exhibit A attached hereto, as well as other assets of the said church and joint venture;

(c) Compulsion of the Defendants to account to Plaintiffs for all assets of the church and joint venture which they still have, for the use and benefit of Plaintiffs and other joint venturers according to the joint venture agreement;

(d) Enforcement of said joint venture agreement according to the express and implied terms thereof as found by the Court to be part of the contract, including but not limited to transfer of all lots and parcels of real estate, as well as the proceeds of all lots and parcels which have been sold, to a homeowner association formed by the Plaintiffs and other joint venturers and lot owners as contem-

plated by said Restriction Agreement and the Concept For Heartpeace Hills, and

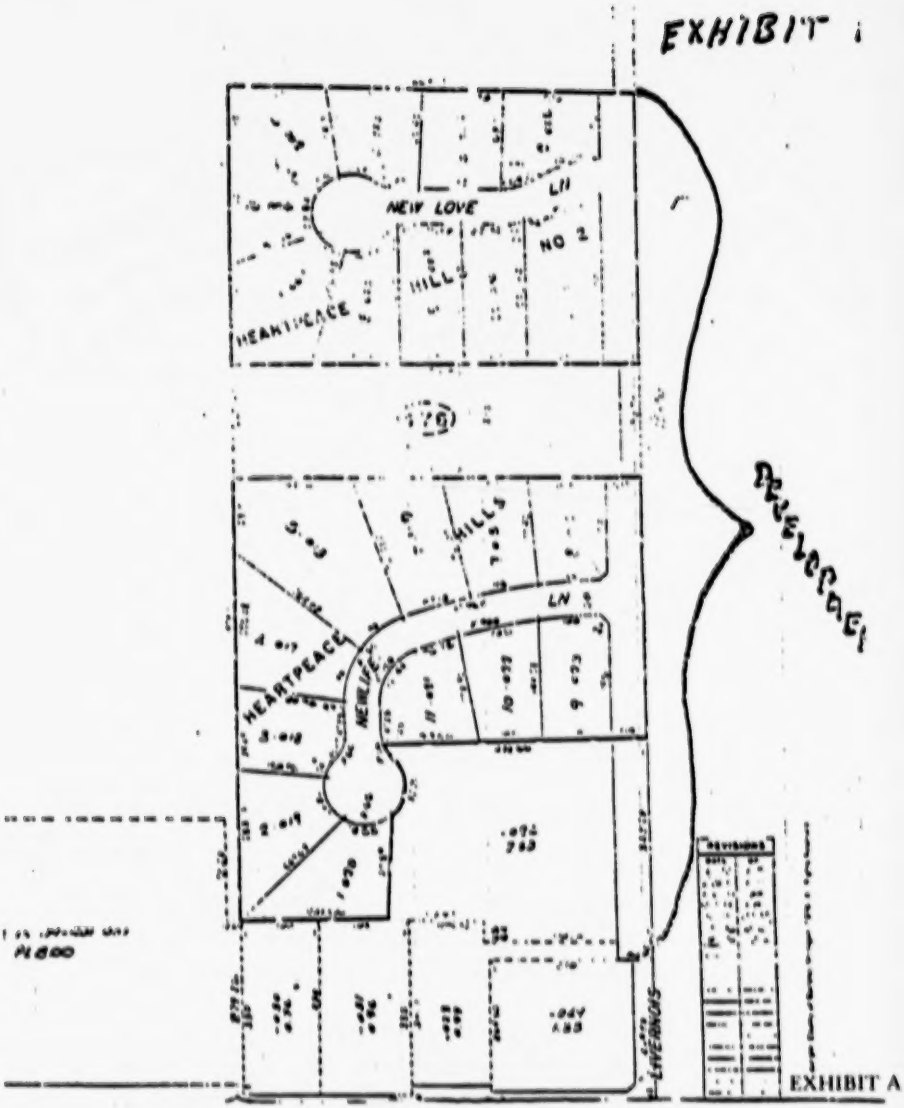
(e) Granting such other and further remedies and relief, legal and equitable, as this Court may deem proper in the circumstances, together with interest, costs and the actual and reasonable attorneys fees so wrongfully incurred by Plaintiffs and the other joint venturers and lot owners who are Plaintiffs in this action.

KENNEY CHAPMAN, COOK, PRINGLE, DeAGOSTINO & MILLER

By: John A. Cook (P12177)
Co-Counsel for Plaintiffs
3001 West Big Beaver Road, Suite 704
Troy, Michigan 48084
643-6500

Dated: September 16, 1977

[NOTE: Plaintiffs' Exhibits A (map), and B (Concept document) are attached. The Restriction Agreement, described in the Complaint but not denominated as an exhibit to the Complaint, is also attached and has been labeled Exhibit C.]


EXHIBIT
NEW LOVE
HILL
HEARTPEACE
HILLS
LN
HEARTPEACE
NEW LIFE
DEVELOPED
EXHIBIT A

PLAINTIFFS' EXHIBIT B

CONCEPT . . . FOR HEARTPEACE HILLS

I

A major need in housing developments today is the means for expressing community in better forms. Heartpeace Hills is a development of fine homesites for Christian families whose common objective is to live in love under the Word.

* The only real love is that found *in Jesus Christ*.
* The only real life is that born and nurtured *by the Holy Spirit*.
* The only true community is found in the human relationships that have unity *in the Will and Spirit of God*.

II.

To better relate the individual home to its neighborhood community environment:

* Each of the two micro-neighborhoods is located on a cul-de-sac. South hill neighborhood has 11 homesites as does the North Hill neighborhood.
* The spirit of the community is strengthened by sharing certain desirable facilities such as a tennis court, swimming pool, playground equipment, a small stream, park, and the meeting place for the Church.

III.

To create a visually appealing environment and assure structural stability in the houses:

* We shall proceed under the directives and council of the Avon Township Boards and the MSUO Regional Planning Board.
* We propose an overall plan for establishing and maintaining a residential community of the highest order.

IV.

The sponsor of Heartpeace Hills is the Fellowship of Christ, a community church located at 71 Livernois, Rochester, Michigan.

* The Fellowship of Christ understands itself to be a part of the one, holy, catholic, Christian Church, where it shares actively and passively in the sufferings and struggles and victories of the whole Church.
* The Fellowship of Christ is a local expression of the Church, the Body of Christ, and is committed to the task of maintaining the ministry of the *whole Gospel to the whole man;* the ministry of the Word to the spirit of man; the ministry of healing and deliverance to the body of man; and the ministry of peach and joy and power in the Holy Spirit to the soul of man.
* The Fellowship of Christ teaches that total participation of the total family in the local church is essential to spiritual life and growth in Christ-likeness.

* The Fellowship of Christ assembles in the Fellowship Center for worship, study and prayer. This is the *work of the Church.*
* The Life of Christ gets into the world as the saints become the "scattered community" in the neighborhood, at home, on the job, in school and at play. This is the basic *witness of the Church.*
* Heartpeace Hills is hallowed ground for those whose hopes in God include a happy, wholesome life together as brethren in the Lord Jesus Christ.

V.

The Heartpeace Hills community is a fellowship of individual families whose common life in Christ automatically establishes certain standards under the Word of God.

* "Love does no wrong to a neighbor; therefore, love is the fulfilling of the Law." Romans 13:10
* "Immorality and all impurity of covetousness must not even be named among you, as is fitting among the saints." Eph. 5:3ff
* "Be subject to one another out of reverence for Christ. Wives be subject to your husbands, as to the Lord. Husbands love your wives as Christ loved the Church . . . Children obey your parents in the Lord for this is right." :Ephesians 5-6:1
* "Finally, be strong in the Lord and in the strength of His might that you may be able to stand against the wiles of the devil. Ephesians 6:10ff

VI.

WHO CAN LIVE ON THE PROMISED LAND AND ENJOY GOD'S BLESSING?

God's Children: "To all who receive Him, who believe on His Name He gave power to become children of God." John 1:12

God's Chosen People: "Those Christians in particular who freely acknowledge that they no longer desire to live a life unto themselves, but desire and chose to live under the authority of God's Word and His governments given to the Church.

God ordained families:

An ordained family is one in which God's "order" has begun; this God appointed pattern has been recognized and approved by the Fellowship of Christ; and there is indication of earnest desire to become yokefellows with Christ.

* The husband *must* be established as head over his household as Christ is head over the Church which is His Body.

* The wife *should* be subject to her husband as to the Lord.

* The children *are* to be obedient to their parents in the Lord, for this is right.

SUMMARY

1. Only by *receiving* a new life in Christ does one qualify for entrance into the "promised land."
2. Only growth in grace and knowledge of Christ as Savior and Lord can a family keep fit to dwell happily on the land.

VII.

HOW DOES ONE ACQUIRE PROPERTY IN HEARTPEACE HILLS?

1. A person may deposit money with the Fellowship of Christ in anticipation of purchasing a homesite. The selling price is based upon the lot size and prorated cost of land improvement.

    a. A homesite of his choice will be reserved for the prospective homeowner. who has on deposit the cost of his lot plus his proportionate share of the cost to acquire land for public roads A & B.

    b. Deposits are non-interest bearing and may be withdrawn at any time upon giving fourteen-day notice of such desire.

    c. Deposits will be returned to the donor, if, in the judgement of the Advisory Board, there is persistence in denying the operations of the Holy Spirit or refusal to receive the ministry of the Fellowship of Christ.

2. When an individual or family is ready to build on the land and their move is confirmed by the Advisory Board and ratified by the Fellowship of Christ at a duly called meeting for that purpose, the Fellowship of Christ shall deed "free and clear" title to the homesite.

3. The Advisory Board of the Fellowship of Christ shall determine on the basis of individual family needs how much money can be loaned by the Church for the purpose of establishing a Christian home on Heartpeace Hills.

4. Homeowners shall build their home and maintain their property in accordance with the Restrictive

Agreement adopted by the Advisory Board and ratified by the Fellowship of Christ.

VIII.

HOW DOES ONE MOVE OFF THE LAND?

"The land shall not be sold in perpetuity, for the land is mine; for you are strangers and sojourners with me. And in all the country you possess, *you shall grant a redemption of the land.*" Leviticus 25:23, 24

The Heartpeace Hills homeowner acknowledges that the Fellowship of Christ has the first right of redemption.

IX.

CONCLUSIONS....

1. Heartpeace Hills is a God-given area of Land for holy use. Occupants of the land agree:
   * To a life in Christ that is different from the world.
   * To standards that are high.
   * To risks that are great.
   * To an obedience in Christ that is all consuming and awe-inspiring.
   * To be God pleasing that the whole world might know Him and come to believe.
2. Furthermore:
   "No man is rich enough to buy his way onto the land of Heartpeace Hills nor poor enough to be kept off the land." A prophetic word.

   "No one can come to me unless the Father who sent me draws him; and I will raise him up at the last day." John 6:44

"I, when I am lifted from the earth, will draw all men to myself." John 12:32

PLAINTIFFS' EXHIBIT C

RESTRICTION AGREEMENT

WHEREAS, THE FELLOWSHIP OF CHRIST, a Michigan ecclesiastical corporation is the vendee, and MARLIN ROSS STARKEY and NANCY L. STARKEY, his wife, and DARLENE LUCAS BABB are the vendors on a land contract, with the exception of Lots 1, 2, 3, 4 and 6, of that certain real estate described as follows:

> Heartpeace Hill Subdivision, of part of the Southeast quarter of Section 9, Town 3 North, Range 11 East, Avon Township, Oakland County, Michigan, according to the plat thereof as recorded in Liber 113, Pages 39 & 40, Oakland County Records.

AND WHEREAS, ROBERT CROWNOVER YOUNG and PATRICIA REDPATH YOUNG, his wife, are the owners of Lot 1; KENNETH STAUGAARD and ELIZABETH JANE STAUGAARD, his wife, are the owners of Lot 2; JOHN THOMAS HUGHES and BERNICE ELEANOR HUGHES, his wife, are the owners of Lot 3; said FELLOWSHIP OF CHRIST is the owner of Lot 4; and OLAF S. HELLAND and EMERIN HELLAND, his wife, are the owners of Lot 6 of said subdivision.

AND WHEREAS it is the intention and purpose of the parties hereinabove named to subject all of the lots in said subdivision to certain building and use restrictions, covenants, conditions, obligations, reservations, rights, powers and charges as hereinafter set forth.

NOW THEREFORE, for valuable consideration and in consideration of the agreements of the others and of the plan and purpose of said subdivision and to the end that the lots therein may be restricted in their use so that the subdivision will develop into a residential community of the highest type, and in order to make said building and use restrictions, covenants, conditions, obligations, reservations, rights, powers and charges, binding and of full force and effect on all of the above described premises, and upon the present and future owners and occupants of the same; THE FELLOWSHIP OF CHRIST, MARLIN ROSS STARKEY and NANCY L. STARKEY, his wife, and DARLENE LUCAS BABB; ROBERT CROWNOVER YOUNG and PATRICIA REDPATH YOUNG, his wife; KENNETH STAUGAARD and ELIZABETH JANE STAUGAARD, his wife; JOHN THOMAS HUGHES and BERNICE ELEANOR HUGHES, his wife; and OLAF S. HELLAND and EMERIN HELLAND, his wife, hereby certify and declare that all of the above described premises are, and that each of the Lots in said subdivision, if and when conveyed, shall be conveyed subject to and charged with all of the building and use restrictions, covenants, conditions, obligations, reservations, rights, powers and charges hereinafter set forth in this instrument, and the recording of this instrument in the office of the Register of Deeds for Oakland County, Michigan, shall be notice to all purchasers of said premises.

RESTRICTIONS

1. DEVELOPERS For the purposes of this Agreement, THE FELLOWSHIP OF CHRIST, a Michigan ecclesiastical corporation, whose principal place of business is located at 71 North Livernois, Rochester, Michigan, or its successors and assigns, is hereby appointed, designated and hereinafter referred to as the "Developers".

2. RESIDENTIAL LOTS All Lots in said subdivision shall be known and described as residential lots with no structure to be erected, altered, placed or permitted to remain on any residential lot other than one single private family dwelling, not exceeding two (2) stories in height, with attached private garage for not less than two cars and with all attached garages designed and constructed so that the garage doors do not face the street on which the lot fronts or abuts; provided, however, that the Developer, THE FELLOWSHIP OF CHRIST, and on its express written consent and waiver, its agents, assigns, and grantees, may erect multiple residential dwellings, units, complexes, duplexes, apartments, and homes, including the construction and maintenance of medical, nursing, kitchen, and entertainment facilities in conjunction therewith. In such event, building line, lot size, floor space, and other similar restrictions pertaining to single private family dwellings shall not be applicable.

3. FRONT BUILDING LINE No dwelling shall be located less than forty (40) feet from the front lot line. On any lot having a curved front lot line, the dwelling shall be located not less than forty (40) feet from the middle point of the front lot line. No dwelling shall be located less than thirty-five (35) feet from any side street line, nor fifteen (15) feet from any side lot line. All projections shall be construed as part of the dwelling and must be constructed within the building lines.

4. MINIMUM FLOOR SPACE No dwelling shall be placed or erected on any lot which has a livable floor space of less than one thousand three hundred (1,300) square feet.

5. LOT SIZE No lot shall be reduced in size by any method whatsoever without the prior written consent of the Developers or their duly authorized representatives. Lots may be enlarged by consolidation with one or more adjoining lots under one ownership. In the event one or more lots are

developed as a unit, all restrictions herein contained shall apply as to a single lot. In any event, no dwelling shall be erected, altered, placed or permitted to remain on any site smaller than one (1) lot as shown on the recorded plat.

6. TREES AND SOIL No trees which exceed six (6) inches in diameter shall be removed or cut nor shall surface soil be dug or removed from any lot for purposes other than building and landscaping on said lot without the prior consent of the Developers or their duly authorized representatives.

7. NUISANCES No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

8. TEMPORARY STRUCTURES Trailers, tents, shacks, barns or any temporary building of any design whatsoever are expressly prohibited within this Subdivision and no temporary residence shall be permitted in unfinished residential buildings. This shall not prevent the erection of a temporary storage building for materials and supplies to be used in the construction of a dwelling, and which shall be removed from the premises on completion of the building.

9. SIGNS No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. Such signs as are allowed must be maintained in good condition at all times and must be removed on the termination of their use.

10. LIVESTOCK AND POULTRY No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes.

11. REFUSE No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers properly concealed from public view.

12. GENERAL CONDITIONS A. No trailers or commercial vehicles, other than those present on business, may be parked in the subdivision. B. No laundry shall be hung for drying in such a way as to be readily visible from the street on which lots front. C. All homes shall be equipped with gas or electric garbage disposal units or incinerators. D. All mail boxes shall be of uniform size, color and name design and shall be located uniformly with reference to the dwellings.

13. RAPID COMPLETION The erection of any new building or repair of any building damaged by fire or otherwise shall be completed as rapidly as possible and should the owner leave such building in an incomplete condition for a period of more than six (6) months, then Developers or their authorized representatives are authorized and empowered either to tear down and clear from the premises the uncompleted portion of such structure, or to complete the same at their discretion, and in either event, the expense incurred shall be charged against the owners' interest therein and shall be a lien upon said lands and premises.

14. OLD BUILDINGS AND MATERIALS No old buildings may be moved on to any lot or lots in this Subdivision.

15. ARCHITECTURAL CONTROL COMMITTEE The Developers, THE FELLOWSHIP OF CHRIST, acting in and through its Advisory Board, its successors and assigns, shall constitute the Architectural Control Committee. The Architectural Control Committee shall have authority to pass on plans and specifications and otherwise guide the development of the Subdivision as planned and restricted herein. The

Architectural Control Committee shall prepare rules and regulations for the conduct of its duties and shall provide for removal, replacement and resignation of its members.

16. COMMITTEE APPROVAL No building, fence, wall or other structure shall be commenced, erected or maintained on any lot nor shall any addition to or change or alteration therein be made, except interior alterations, until the plans and specifications showing the nature, kind, shape, height, materials, color scheme, location on lot and approximate cost of such structure and the grading plan on the lot, including grade elevations of buildings to be built upon shall have been submitted to and approved in writing by the Architectural Control Committee or its authorized agent, and a copy thereof as finally approved, lodged permanently with the Committee. The Committee shall have the right to refuse to approve any such plans or specifications or grading plans which are not suitable or desirable in its opinion for aesthetic or other reasons. In so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration suitability of the proposed buildings or other structure to be built on the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from adjacent or neighboring property. It is understood that the purpose of this paragraph is to cause the Subdivision to develop into a beautiful, harmonious private residence section and that the Architectural Control Committee shall not be arbitrary in its decisions. If a disagreement on the points set forth in this paragraph should arise, the parties shall submit the same to arbitration by competent architects in the usual manner. The Committee may, in the exercise of its discretion as indicated above, permit the erection of such appurtenances as, for example, swimming pools or green houses.

17. ABATEMENT OF VIOLATIONS Violation of any condition or restriction or breach of any covenant herein contained shall give the parties hereto, in addition to all other remedies, the right to enter upon the land as to which such violation or breach exists, and summarily to abate and remove, at the expense of the owner thereof, any erection or other violation that may be or exist thereon contrary to the intent and provision hereof, and the parties hereto shall not thereby become liable in any manner for pre-pass, abatement or removal.

18. DURATION These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

19. ENFORCEMENT Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Failure to enforce any of the covenants herein contained shall in no event be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto.

20. ASSIGNMENT Any and all of the rights, powers, obligations, title, easements and estates reserved or given to THE FELLOWSHIP OF CHRIST, its Advisory Board or the Architectural Control Committee may be assigned to any corporation or association, composed of one-half (½) or more of the owners of property in said plat, that will agree to assume said rights, powers, duties and obligations and carry out and

perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its consent to the acceptance of such rights and powers, and such assignee or transferee shall thereupon have the rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the parties hereto, and parties hereto thereupon being released therefrom. When all of the lots in said plat have been sold by THE FELLOWSHIP OF CHRIST, then upon demand of THE FELLOWSHIP OF CHRIST, its Advisory Board, a corporation or association of the owners of lots in said plat shall be formed which shall assume said rights, powers, duties and obligations and carry out the performance of the same, and THE FELLOWSHIP OF CHRIST and its Advisory Board thereupon shall be released.

21. SEVERABILITY Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

22. REPURCHASE In order to maintain the concept of Heartpeace Hills, the Developer, THE FELLOWSHIP OF CHRIST, shall have the first option to repurchase any lots in the subdivision sold by it and subsequently offered for resale, whether improved or unimproved, including Lots 1, 2, 3 and 6 heretofore sold, said option to be for an amount and on terms equal to those of a bona fide offer received by the prospective seller, and to be exercised within sixty (60) days after written notice to THE FELLOWSHIP OF CHRIST by said prospective seller of his intention to sell and the receipt of such offer.

23. EASEMENT Whereas it is the intent and purpose of the parties hereto to have telephone lines installed underground and to have electric power distribution lines

placed underground to supply single phase, 120/240 volt, three-wire, 60 cycle service, and to provide for certain rights and benefits to the utilities placing their lines underground. Therefore, the said parties hereby declare that said premises shall be held, transferred, sold and conveyed subject to the restrictions, covenants, reservations, easements, charges, obligations and powers as follows:

A. Private easements for public utilities have been granted on the plat of said Heartpeace Hills Subdivision as shown thereon.

B. No excavations (except for public utility purposes), no changes of finished grade, and no structures or apparatus of any kind, except line fences, shall be allowed within the public utility easements of the subdivision. Except as provided herein, the owners shall have the right to make any use of the land, subject to such easements, which is not inconsistent with the right of the utilities; provided, however, that the owners shall not plant trees or large shrubs within the public utility easements. The public utilities shall have the right to trim or remove any trees, bushes, or other plants of any kind within said easements and also shall have the right to trim any trees, bushes, or other plants of any kind outside of said easements which, in the sole opinion of the utilities, interferes with the facilities thereto or is necessary for the installation, reinstallation, repair, maintenance or removal of their facilities in any public utility easement of the subdivision. The trimming or removal of such trees, shrubs, or plants of any kind by a public utility for the purpose set forth above shall be without liability to the utility.

C. No shrubs or foliage shall be permitted on owners' property within five (5) feet of the front doors of the transformers, nor shall such shrubs or foliage be permitted within five (5) feet of service connection pedestals.

D. The original or subsequent owners of lots in this subdivision shall install underground, own, maintain and replace, at their own expense, the single phase electric service conductors lying between the transformers or service connection pedestals located in said easements and the residences erected on said lots.

E. The installation of all underground service conductors, type USE, shall be in compliance with the National Electrical Code for direct burial and consist of three service conductors at least 1/0 copper in size, type RHW, rubber insulated and neoprene jacketed.

F. All property owners in the subdivision to whom telephone service is now or hereafter furnished shall be responsible for furnishing, at no cost to the utility, the trenching or backfilling necessary for the installation, reinstallation, maintenance or repair of telephone facilities from the public utility easement to the residence as required by the utility. The property owners and not the utility shall be responsible for injury or damage to persons or property caused by the trenching, existence of backfilling of the trench.

G. The grade established by the Developer at the time the utilities place their underground facilities in the easements shall be considered final or finished grade.

No property owner shall make any change in such grade in or near easement or alter any ground conditions, including drainage, when the change in grade or alteration of ground conditions, in the opinion of the utility concerned, interferes with the facilities already installed.

H. Property owner shall pay to the utility concerned the cost of relocation or rearrangement of utility equipment, where in the opinion of the utility, such relocation or rearrangement is made necessary because of a violation by the

property owner of any of the foregoing restrictions pertaining to utility underground installations.

I. The foregoing restrictions A through H shall be covenants running with the land and shall not be subject to termination without the consent of the utilities herein concerned.

J. Enforcement shall be by proceeding in a civil action against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages.

K. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF all of the parties hereto have hereunto set their hands and seals this 21 day of Sept, A.D. 1964.

THE FELLOWSHIP OF CHRIST, a Michigan ecclesiastical corporation
71 N. Livernois Road, Rochester, Michigan

By (s) Nelson Carman, Secretary

And (s) Kenneth Staugaard, Treasurer

(s) ROBERT CROWNOVER YOUNG
1396 Newlife Lane, Rochester, Michigan

(s) PATRICIA REDPATH YOUNG, his wife
1396 Newlife Lane, Rochester, Michigan

(s) KENNETH STAUGAARD
1384 Newlife Lane, Rochester, Michigan

(s) ELIZABETH JANE STAUGAARD, his wife
1384 Newlife Lane, Rochester, Michigan

(s) JOHN THOMAS HUGHES
181 E. Buena Vista, Highland Park, Michigan

(s) BERNICE ELEANOR HUGHES, his wife
181 E. Buena Vista, Highland Park, Michigan

(s) OLAF S. HELLAND
1336 Newlife Lane, Rochester, Michigan

(s) EMERIN HELLAND, his wife
1336 Newlife Lane, Rochester, Michigan

Witnesses as to The Fellowship of Christ; Robert Crownover Young and Patricia Redpath Young, his wife; Kenneth Staugaard and Elizabeth Jane Staugaard, his wife; John Thomas Hughes and Bernice Eleanor Hughes, his wife; and Olaf S. Helland and Emerin Helland, his wife.

(s) Margaret D. Jones

(s) Clara E. Bryce

(s) MARLIN ROSS STARKEY
39 Franklin Boulevard, Pontiac, Michigan

(s) NANCY L. STARKEY, his wife
39 Franklin Boulevard, Pontiac, Michigan

(s) DARLENE LUCAS BABB
519 W. Elm, Reading, Michigan

Witnesses as to Marlin Ross Starkey and Nancy L. Starkey, his wife.

(s) Donna Jean Ross

(s) Clara E. Bryce

Witnesses as to Darlene Lucas Babb.

(s) Louise Kelley

(s) Eleanor J. Kuster

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this 21 day of Sept, A.D. 1964, before me personally appeared Nelson Carman and Kenneth Staugaard to me personally known, who being by me sworn, did each for himself say that they are respectively the secretary and treasurer of The Fellowship of Christ, the corporation named in and which executed the within instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors (Advisory Board); and said Nelson Carman and Kenneth Staugaard acknowledged said instrument to be the free act and deed of said corporation.

/s/ Nina Martin
Notary Public, Oakland County, Michigan. My Commission Expires: 4-4-66

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this 21 day of Sept., A.D. 1964, before me personally appeared Robert Crownover Young and Patricia Redpath Young, his wife; Kenneth Staugaard and Elizabeth Jane Staugaard, his wife; John Thomas Hughes and Bernice Eleanor Hughes, his wife; and Olaf S. Helland and Emerin Helland, his wife, to me personally known, who being by me sworn, did say that they were the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

/s/ Nina Martin
Notary Public, Oakland County, Michigan. My Commission Expires: 4-4-66

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

On this 21 day of Sept., A.D. 1964, before me personally appeared Marlin Ross Starkey and Nancy L. Starkey, his wife, to me personally known, who being by me sworn, did say that they were the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

/s/ Nina Martin
Notary Public, Oakland County, Michigan. My Commission Expires: 4-4-66

STATE OF MICHIGAN)
) SS.
COUNTY OF HILLSDALE)

On this 19th day of September, A.D. 1964, before me personally appeared Darlene Lucas Babb, to me personally known, who being by me sworn did say that she is the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

/s/ Duane V. Warkoczeski
Notary Public, Hillsdale County, Michigan. My Commission Expires: 10-29-66

Instrument drafted by: Walter Jorgensen, Jr., 2930 Guardian Building, Detroit, Michigan 48226

APPENDIX L

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 1

(March 6-7, 1978)

EXAMINATION OF RESPONDENT KENNETH STAUGAARD

* * *

[7]

Q The question was, can you recall the names —

THE COURT: Mr. Cook, let him answer the question if he can.

A The names of the parties at his home in Frankfort and the meeting we were at?

Q Do you recall their names?

A Yes.

Q Who were they?

A Dr. Young and his family, of course, were there.

Q That included Patricia Young?

A Yes. My wife and myself. Clara Bryce. John and Mildred [8] Lindsey. I believe the Cohoons.

Q Do you recall the approximate date of that meeting?

A That was in approximately the month of August, 1958.

Q What was discussed at that meeting?

A We had gone to his house to attempt to talk to him about the possibility of him becoming the pastor of our church, a church that was not yet formed. That we were hoping we could form it in Rochester, Michigan.

THE COURT: Just answer the question.

Just ask the question you want and cut the witness off so we can proceed to the next question.

Q I submit the Judge's point is well taken here. What was discussed in the meeting?

A The possibility of Dr. Young becoming the pastor of a church in Rochester.

THE COURT: What is your offer of proof with this witness? What are you trying to show?

MR. COOK: That a group of people came together at this point and the church was established. That this was the core group that went on to form a joint venture.

THE COURT: Well, up to the point where you said joint venture, I was inquiring what facts you intent to prove, not the legal conclusion. Is there any doubt in your mind, Mr. Broder, that he met with these people?

[9]

MR. BRODER: No, your Honor. I would stipulate to that.

MR. COOK: Your Honor, I am not interested in —

THE COURT: The Court will make a finding of fact.

MR. COOK: The Court is finding these people met on that date?

THE COURT: That they met that date and the people he testified to being there were present, and that the meeting actually occurred. And I take it subsequently Dr. Young became the pastor of a church.

Is that correct, Mr. Broder? Are you stipulating to that?

MR. BRODER: Yes, your Honor.

APPENDIX M

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 6

(May 1, 1978)

* * *

[28]

MR. COOK: Your Honor, I am offering into evidence Plaintiff's Exhibit 45 entitled Declaration of Pat Young.

THE COURT: Alright, take that one. Is there any objection to introduction of that Exhibit?

[29]

MR. BRODER: I object to relevancy, your Honor.

THE COURT: But you agree it is authentic and what it appears to be?

MR. BRODER: Well, your Honor, there has been discussion here whether this is a transcription of a meeting or whether this was handed out at a meeting.

THE COURT: What is your offer of proof?

MR. COOK: The offer of proof is not that it was handed out at a meeting. The offer of proof is that this is a transcript of part of a meeting at which Pat Young made various statements about her becoming the Mother of the Church, etc.

THE COURT: What is it supposed to be? Minutes of a meeting of the church?

MR. COOK: Your Honor, the testimony so far —

THE COURT: Forget the testimony. I want to know what the offer of proof is on that exhibit. I want to know what materiality it has.

MR. COOK: The offer of proof on this particular exhibit is that it is a transcript of things that were said, taken off a

tape recording of a meeting of the Fellowship of Christ at which our clients, the Plaintiffs, [30] were present with the exception of Mr. Burton. That this, in accordance with the usual practice of the church, this was mimeographed and handed out to the congregation after that meeting. We don't claim it was handed out at the meeting, but it was transcribed and handed out after the meeting.

THE COURT: Then why should it be —

MR. COOK: As to materiality —

THE COURT: Wait a minute. Why should it be received if it is merely ultimately notes she took, or are you representing these are minutes of a meeting of the church, or what is it? What is the significance? How does it bear on the issues?

MR. COOK: It bears on the issue because this is a verbatim transcript of what she said, better than the memory of my clients. It states, "I am the Mother of this church and shall be until the governments of this dear body are mature enough to manage on their own." I am saying this is part of the action of Mr. and Mrs. Young to usurp the authority of the Advisory Board here and take away control of this venture, which is the underlying basis of the whole venture.

THE COURT: In other words, it was not a meeting of the congregation of the church?

[31]

MR. COOK: Yes, it was, your Honor. It was one of the regular prayer meetings at which she asked permission to make her statement to all of those present. Dr. Young had absented himself and gone up north for awhile over the disputes.

THE COURT: What I want to know is, is it your position that this has an impact on a previous contract that had been entered into, a contract you allege constituted the joint venture?

MR. COOK: Yes, your Honor.

THE COURT: This was a breach of that contract? Is that what you are saying?

MR. COOK: Yes. It's a breach of the entire substance of the joint venture. It caused the parties to withdraw from the Fellowship of Christ, but not the venture itself. They continued to develop the property, but were forced to either accept Pat Young's Declaration of being the Mother of the Church or leave the church.

THE COURT: What forced them?

MR. COOK: Dr. Young sent out a mimeographed message of the Fellowship of Christ where he went through the whole thing. He says, "We are going out together in Jesus Christ, the Lord. If you decide you want discipleship on other terms, a church wrinkled and blemished [32] and glory for another you will be unhappy and unhelpful in the Fellowship of Christ. We are moving on in the victory of Jesus. Are you with us?"

The substance of the whole thing was that they had to accept all the statements about Pat being the Mother of the Church, about it being better to give property to the church than keep it for yourself, etc., etc. Then if they did not agree to all those things they would be unhappy and unwelcome in the Fellowship of Christ.

THE COURT: Assume that is the case. What has that to do with the contract?

MR. COOK: That was contrary to all understandings the By-Laws stated as to the governing body of the group. They used the church as a vehicle for controling the development of this property. Now the element of control was being taken away from them. They were just being told, okay, look, from now on it's Pat and Bob. The Advisory Board and Elders no longer have authority . . .

* * *

[41]

MR. COOK: I will go to the next exhibit. Exhibit 48 is a message to the Fellowship of Christ which refers back to this Declaration of Pat Young. It is a typewritten and then mimeographed statement called Message to Fellowship of Christ, dated March 25, 1969. It was drafted and handed out to all the members of the congregation, including my clients, by Dr. Young. I believe that is agreeable so far.

MR. BRODER: Your Honor, I object to the relevancy and materiality again. I want to raise one other matter for the Court's consideration with reference to all of these religious statements. Your Honor, I have tried to [42] suggest to the Court that I believe any reference which brother coursel makes with respect to religious reasons surrounding why the plaintiffs left is improper.

Now, I can cite to this Court the United States Supreme Court case of Presbyterian Church, and the United States versus Mary Elizabeth Bulehall Presbyterian Church. That is reported at 89 Supreme Court 601, a 1969 case. Now, in that case, your Honor, the Court considered a question involving whether or not a Church had abandoned its tenets and doctrines was exclusively within the jurisdiction of Church Courts and should not be submitted to a jury for determination as it would destroy the separation of Church and State.

The Court did rule that the civil courts could not consider religious reasons for such a departure of doctrines. That that would infringe upon the First Amendment of the Constitution. I do have copies of that case if your Honor would like it.

THE COURT: Mr. Broder, I am thoroughly familiar with the case, that that is the law of the land. There is no question about it. But in order to determine these questions you first have to know what the facts are. The question now is one of competence of evidence. The Court is going to overrule your objection and receive it in [43] evidence.

In

APPENDIX N

MOTION OF MICHIGAN ATTORNEY GENERAL

(January 20, 1981)

STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT AND JUDITH BOGRETTE, WILLIAM AND TRACIE CUPPY, OLAF AND EMERIN HELLAND, JOHN T. AND BERNICE HUGHES, KENNETH AND ELIZABETH STAUGGAARD, CHARLES AND CAROL COHOON AND LEO W. BURTON,

Plaintiff-Appellees,

v

ROBERT C. YOUNG AND PATRICIA R. YOUNG, JANE JONES AND FELLOWSHIP OF CHRIST CHURCH,

Defendant-Appellants, and

FRANK J. KELLEY, Attorney General of the State of Michigan,

Intervening Defendant-Appellant.

S.C. No. 64990
C.A. No. 78 5213
Oakland Cty. C.C.
No. 77 152 370 AZ

---

2. The Defendants-Appellants raised before the Court of Appeals issues concerning the propriety of the trial court's Order of Dissolution with respect to first amendment and due process rights of the church, as well as with respect to the question of whether the trial court had impermissibly usurped the power of the Attorney General. These issues were disposed of by the Court of Appeals without discussion as lacking merit.

3. The paramount interest of the Attorney General, as designated representative of the State, in requiring corporations to adhere to corporate charters and in policing corporate transgressions or violations of charter, is unequivocally recognized by statutes, court rules and case law. Inquiry into abuses by ecclesiastical corporations is specifically governed by the Michigan Ecclesiastical Corporation Act, particularly MCLA 450.180; MSA 21.181, which provides the exclusive procedure by which involuntary dissolution of a religious corporation may be effected: quo warranto proceedings initiated by the Attorney General pursuant to GCR 1963, 715 and Chapter 45 of the Revised Judicature Act, 1961, PA 236 MCLA 600.4501 *et seq;* MSA 27A.4501. Failure to abide by these requirements renders the trial court's judgment void for lack of jurisdiction.

4. Upon dissolution of an ecclesiastical corporation properly effected, all assets remaining after satisfaction of all duly proven creditors' claims escheat to the State of Michigan and are credited to the primary school fund to be expended for the advancement of primary training and instruction in

INTERVENORS' MOTION FOR RECONSIDERATION

NOW COME Intervenors, Frank J. Kelley, Attorney General of the State of Michigan, Robert A. Derengoski, Solicitor General, Eugene Krasicky, First Assistant Attorney General, and Susan Peck Iannotti, Assistant Attorney General, and move this Court to reconsider its denial of leave to appeal in the above-captioned cause for the following reasons:

1. On December 3, 1980 this Court denied leave to appeal from the unreported January 28, 1980, Court of Appeals decision affirming the Oakland County Circuit Court order dissolving a bona fide ecclesiastical corporation on the ground that the corporation was "not a church but a financial arrangement used by the individual Defendants as a subterfuge and fraud on the people of the state and the plaintiffs." (See May 16, 1978 Circuit Court Opinion, page 6). Plaintiffs, former members of the Defendant Church, sought enforcement of an alleged joint business venture to develop a residential subdivision. The remedy of dissolution of the corporation and appointment of a receiver to preside over the disposition of the corporate assets, known as quo warranto relief, was ordered by the unilateral action of the Circuit Court and was not requested by any of the parties to the action. The Attorney General had no notice of the proceedings and had no opportunity to participate therein. In fact, the Attorney General's earliest notice of this case was not received until December 17, 1980 by letter from counsel for Defendant-Appellants.

2. The Defendants-Appellants raised before the Court of Appeals issues concerning the propriety of the trial court's Order of Dissolution with respect to first amendment and due process rights of the church, as well as with respect to the question of whether the trial court had impermissibly usurped the power of the Attorney General. These issues were disposed of by the Court of Appeals without discussion as lacking merit.

3. The paramount interest of the Attorney General, as designated representative of the State, in requiring corporations to adhere to corporate charters and in policing corporate transgressions or violations of charter, is unequivocally recognized by statutes, court rules and case law. Inquiry into abuses by ecclesiastical corporations is specifically governed by the Michigan Ecclesiastical Corporation Act, particularly MCLA 450.180; MSA 21.181, which provides the exclusive procedure by which involuntary dissolution of a religious corporation may be effected: quo warranto proceedings initiated by the Attorney General pursuant to GCR 1963, 715 and Chapter 45 of the Revised Judicature Act, 1961, PA 236 MCLA 600.4501 *et seq;* MSA 27A.4501. Failure to abide by these requirements renders the trial court's judgment void for lack of jurisdiction.

4. Upon dissolution of an ecclesiastical corporation properly effected, all assets remaining after satisfaction of all duly proven creditors' claims escheat to the State of Michigan and are credited to the primary school fund to be expended for the advancement of primary training and instruction in

the public schools. See MCLA 450.180; MSA 21.181 and the Michigan Code of Escheats, 1947 PA 329, MCLA 567.62; MSA 26.1053(52).

5. The trial court's usurpation of the Attorney General's authority to seek dissolution of an ecclesiastical corporation precluded any representation of the State's interests. Moreover, this serious error, coupled with the trial court's enforcement of the joint business venture requested by Plaintiffs, served to severely prejudice the claims of all creditors of the corporation. In stark contrast to the unauthorized procedure employed by the trial court assigning primacy to Plaintiffs' claims against the Defendant corporation, Section 180 of the Michigan Ecclesiastical Corporation Statute, MCLA 450.180; MSA 21.181 provides for the fair and orderly presentation of all claims against the corporation at the same time, as in insolvency proceedings.

6. The Intervenor Attorney General urges this Honorable Court to reconsider its denial of leave to appeal so that he may address the Court on these issues of paramount interest to the State of the people thereof.

WHEREFORE, the Intervenor Attorney General respectfully requests that this Court reconsider its denial of Defendant-Appellants' Application for Leave to Appeal and on reconsideration reverse the judgment of the circuit court.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Eugene Krasicky
First Assistant Attorney General

Susan Peck Iannotti
Assistant Attorney General

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525 W. Ottawa
Lansing, MI 48913
(517) 373-7780

Dated: January 20, 198.

APPENDIX O

BRIEF OF MICHIGAN ATTORNEY GENERAL

(January 20, 1981)

STATE OF MICHIGAN
IN THE SUPREME COURT

ROBERT AND JUDITH BOGRETTE, WILLIAM AND TRACIE CUPPY, OLAF AND EMERIN HELLAND, JOHN T. AND BERNICE HUGHES, KENNETH AND ELIZABETH STAUGAARD, CHARLES AND CAROL COHOON AND LEO W. BURTON,

Plaintiff-Appellees,

v

ROBERT C. YOUNG AND PATRICIA R. YOUNG, JANE JONES AND FELLOWSHIP OF CHRIST CHURCH,

Defendant-Appellants, and

FRANK J. KELLEY, Attorney General of the State of Michigan,

Intervening Defendant-Appellant.

S.C. No. 64990
C.A. No. 78 5213
Oakland Cty. C.C.
No. 77 152 370 AZ

Robert A. Derengoski (P12695)
Solicitor General
Attorney for Intervening Attorney General

John A. Cook (P12177)
Attorney for Plaintiffs-Appellees
and Cross-Appellants

Andrew J. Broder (P23051)
Attorney for Defendants-Appellants
and Cross-Appellees

BRIEF IN SUPPORT OF INTERVENOR'S MOTION FOR RECONSIDERATION OF DENIAL OF DEFENDANT-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Eugene Krasicky
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BOOKS & TREATISES

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MLP, Quo Warranto, §1.....

STATEMENT OF QUESTION PRESENTED

MAY A CIRCUIT COURT, UNILATERALLY AND WITHOUT THE REQUEST OF ANY PARTY, ORDER THE DIS-

SOLUTION OF A BONA FIDE ECCLESIASTICAL CORPORATION IN DEROGATION OF THE ATTORNEY GENERAL'S WELL-ESTABLISHED *QUO WARRANTO* AUTHORITY?

THE TRIAL COURT DID NOT CONSIDER THIS QUESTION.

THE COURT OF APPEALS SAYS "Yes."*

THE SUPREME COURT SAYS "Yes."**

APPELLANTS SAY "No."

INTERVENING APPELLANT SAYS "No."

APPELLEES SAY "Yes."

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* While the Court of Appeals did not directly so rule, it did dismiss this issue for lack of merit.

** The Supreme Court denied leave to appeal, thereby permitting the Court of Appeals decision to stand.

STATEMENT OF FACTS AND PROCEEDINGS

The Attorney General intervenes in this matter on behalf of the People of the State of Michigan, whose interests have been seriously compromised as a result of the entry of an Order of Dissolution against a non-profit, ecclesiastical corporation, without notice to the Attorney General and without his participation, contrary to the unambiguous command of Michigan statutes, court rules, and case law.

Specifically, former members of the Fellowship of Christ Church brought suit against the Church, its Pastor and his wife, and one of the elders of the Church, seeking injunctive and declaratory relief for breach of an alleged joint business venture to develop a residential subdivision. In ruling for Plaintiffs, Oakland County Circuit Court Judge James S. Thorburn found that the Fellowship of Christ Church was "not a church but a financial arrangement used by the individual Defendants as a subterfuge and fraud on the people

of the state and the plaintiffs."[1] Premised on that finding, the Circuit Court ordered that the corporation be dissolved for failure to attain its corporate purpose and that a receiver be appointed to take possession of the corporation's assets and preside over their disposition. The Michigan Court of Appeals affirmed the trial court's decision on the grounds that a joint venture among the Plaintiffs and Defendants had been properly found and that common property of the subdivision was subject to reciprocal negative easements. None of the other issues raised by the Defendant-Appellants is discussed by the Court of Appeals or found to be of merit.[2] Leave to Appeal to the Michigan Supreme Court was denied without written opinion on December 3, 1980.

---

[1] *See* May 16, 1978 Opinion of Circuit Court, page 6. This and other findings of the circuit court will be discussed in more detail in the "ARGUMENT" segment of this Brief.

[2] *See* January 28, 1980 Court of Appeals unpublished per curium opinion. Included among the issues found to be without merit was that of whether the trial court's decision to dissolve the church constituted an impermissible usurpation of the power of the Attorney General. See Appellants' Brief, Issue I(C).

The Attorney General urges this Court to reconsider its denial of leave to appeal for the reasons set forth below.

ARGUMENT

A BONA FIDE ECCLESIASTICAL CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE MAY BE DISSOLVED *ONLY* PURSUANT TO PROCEEDINGS IN THE NATURE OF *QUO WARRANTO* INITIATED BY THE ATTORNEY GENERAL FOR THIS STATE, AND MAY NOT, THEREFORE, BE EFFECTED PURSUANT TO THE UNILATERAL ACTION OF A CIRCUIT COURT.

The Circuit Court had no subject matter jurisdiction either to inquire into the conduct of the officers of the Fellowship of Christ Church, a bona fide Michigan ecclesiastical corporation, or, premised on that inquiry, to dissolve the corporation by its own unilateral actions and without the request of any party to the suit. Only the Attorney General for the State of Michigan is vested with the authority to initiate proceedings to obtain what is referred to as *quo warranto* relief.[3] This conclusion is compelled not only by a review of applicable statutes, court rules, and case law, but also by close examination of the grounds advanced by the trial court in support of its actions. The applicable law will be addressed first.

---

[3] GCR 1963, 710.1 instructs that the writ of quo warranto shall not be issued as such; rather "quo warranto" refers to the relief obtainable in a civil action under GCR 1963, 715.

Quo warranto is the remedy or proceeding in which the State inquires "by what right" a party asserts claim to an office or franchise:

> "Quo warranto has, from its remotest history as a remedy, been deemed and employed as the exclusive proceeding by which the sovereign inquires into the right to exercise and enjoy as well as the method of employing franchises, which, not being of common right, are considered as particles or attributes of sovereignty. It is the appropriate remedy against a corporation for abuse of power, mis-use of privilege, malfeasance, or nonfeasance."
>
> 2 T. Spelling, *A Treatise on Injunctions and Other Extraordinary Remedies* 1551 (2d ed, 1901).

The principal role of the Attorney General as representative of the sovereign in quo warranto proceedings has remained unchanged since early common law and is preserved

by court rule and statute. For example, GCR 1963, 715.2 provides as follows:

> "(1) Actions by the Attorney General. Actions for quo warranto shall be brought by the attorney general when the actions are against:
>
> (a) persons specified in sub-rule 715.1(1);
>
> (b) persons who usurp, intrude into, or wrongfully hold or exercise any office in any public corporation created by the authority of this state;
>
> (c) any association, or number of persons, acting as a corporation within this state without being legally incorporated;
>
> (d) a corporation that offends against any of the provisions of the act or acts creating, offering, or renewing the corporation;
>
> (e) a corporation that violates the provisions of any law by which the corporation shall have forfeited its charter by misuser;
>
> (f) a corporation that has forfeited its privileges and franchises by non-user;
>
> (g) a corporation that has done or omitted any acts which amount to a surrender of its corporate rights, privileges and franchises; or has exercised any franchise or privilege not conferred upon it by law."

Under specifically defined circumstances, prosecuting attorneys and other citizens may gain authorization to obtain quo warranto relief:

"(2) Actions by Prosecutor or Citizen. Other actions for quo warranto shall be brought by the prosecuting attorney of the proper county, without leave of court, or by any citizen of the county by special leave of the court or a judge thereof.

(3) Application of Attorney General. Any person may apply to the attorney general to have the attorney general bring the actions specified in subrule 715.2(1). The attorney general may require the person to give security to indemnify the state against all costs and expenses of the action. The person making the application, and any other person having the proper interest, may be joined as parties plaintiffs.

(4) Refusal of Attorney General to Bring the Action. If, upon proper application and offer of security, the attorney general refuses to bring the action, the person may apply to the appropriate court for leave to bring the action himself. Leave to bring the action may be granted by the court."

GCR 1963, 715.2(2)-(4).

The legislature has made similar provision in Chapter 45 of the Revised Judicature Act, 1961 PA 236, MCLA 600.4501 *et seq;* MSA 27A.4501 *et seq:*

> **"The attorney general shall bring an action for quo warranto when the facts clearly warrant the bringing of that action. If the attorney general receives information from a private party and refuses to act, that private party may bring the action upon leave of court."**

MCL 600.4501; MSA 27A.4501.

Thus, while it is clear that both the court rule and the Revised Judicature Act provide that private citizens may initiate quo warranto proceedings, it is also clear that three conditions precedent to the exercise of that right must be met: 1) request must be made upon the Attorney General, and upon his refusal; 2) request for leave must be made upon a court; and 3) the court must exercise its discretion in favor of initiation of the suit by one other than the Attorney General.

Moreover, failure to comply with these requirements strips a party of standing to seek quo warranto relief. For example, in *Jackson Prosecutor* v *Sisters of Mercy*, 74 Mich. App 374 (1977), the county prosecutor sued a hospital for alleged ultra vires acts and for violations of state anti-trust law. The Court of Appeals ruled, however, that the prosecutor had no standing to maintain his action, since the Attorney General was exclusively designated to raise questions relating to abuse of corporate powers and that such an action must be brought in quo warranto. *Jackson Prosecutor, supra,* at 378-380. The Court of Appeals also ruled that a party who lacks standing to initiate a controversy is not permitted to cure the defect by adding the proper party. *Oleksy* v *Sisters of Mercy*, 74 Mich App 374, 377-378 (1978) (companion case to *Jackson Prosecutor, supra*).

More importantly, where the plaintiff is without authority to bring the action, the court lacks jurisdiction to proceed. *Dartland* v *Hancock Schools*, 25 Mich App 14 (1970). In *Dartland,* the Court of Appeals upheld the lower court's entry of accelerated judgment for lack of jurisdiction where a prosecuting attorney was found to be without authority to initiate quo warranto proceedings.

Returning to Chapter 45 of the Revised Judicature Act, which deals at length with quo warranto proceedings, the nature of the remedy is made clear by an examination of some of the sections of that Act. The Attorney General may seek the ouster of one found guilty of usurping or unlawfully holding any office or franchise, MCLA 600.4515; MSA 27A.4515, as well as the dissolution of any corporation misusing its corporate rights and privileges, MCLA 600.4521; MSA 27A.4521 and the appointment of a receiver and an accounting. MCLA 600.4531; MSA 27A.4531. By enacting these sections, the legislature clearly recognized the critical role of the state, by its representative the Attorney General, in proceedings inquiring into the propriety of corporate conduct. Nowhere is authorization given to private citizens to seek quo warranto relief without first notifying the Attorney General and requesting his intervention.

In addition to provisions under the Revised Judicature Act, a number of special statutes contain provisions applicable to quo warranto proceedings in particular situations.[4] Of special relevance to the case at bar is the ecclesiastical corporation statute, MCLA 450.178-450.186; MSA 21.179 - 21.187. While the quo warranto relief obtainable against ecclesiastical corporations is similar to that respecting corporations generally in Chapter 45 of the Revised Judicature Act, the applicable provision is nevertheless far more specific:

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[4] *See, e.g.* MCLA 445.702; MSA 28.32 (corporation violating anti-trust laws); MCLA 445.735; MSA 28.54 (corporation violating state law against entering contracts in restrain of trade); MCLA 168.861; MSA 6.1861 (remedy for violations of election laws).

> "... *Whenever proceedings in the nature of quo warranto have been or may hereafter be brought*

against any association or corporation organized or doing business in this state as a religious or ecclesiastical body, and when it shall appear in the information that such association or corporation has exceeded its powers, misused its franchises and privileges, committed any fraud or deception, has been guilty of any misapplication of funds or property, has secured property or donations through fraud or misrepresentation, has acquired or used property illegally, has been guilty of propagating or teaching immoral or vicious principles or doctrines or has otherwise violated the laws of this state or the United States, *the attorney general may, in such proceedings, or in separate proceedings, apply to the same or any other circuit court for a receiver for the property and effects of such association or corporation,* and in all such cases the court shall appoint a receiver in like manner and with like effect and powers as in insolvency proceedings as provided for in the judicature act of 1915 and any amendments thereto. All persons having any interest in the property of such association or corporation or who have conveyed, donated or contributed substantially to the funds or property of such association or corporation, may intervene in such proceedings for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to the rules and practice of the court. *Any property, goods or money of such association or corporation, or held in trust by or for it, and not claimed or distributed to the creditors or other claimants whose claims have been duly proved in the proceedings herein authorized, shall escheat to the people of this state and upon the*

> *winding up of the receivership shall be conveyed to the state board of escheats, and shall be disposed of by such board as now provided by law for other escheated property."*
>
> MCLA 450.180; MSA 21.181 (emphasis added).

This section is extremely important for at least two reasons. First, the unambiguous language of the statute directs that issues, such as whether a religious corporation "exceeded its powers," or "committed any fraud or deception," or is "guilty of any misapplication of funds or property," or has secured property "through fraud or misrepresentation," are to be raised in proceedings in the nature of quo warranto by the Attorney General. Only the Attorney General may apply to a circuit court for appointment of a receiver to properly dispose of the corporation's assets.

Second, and perhaps more importantly, nowhere is the need for involvement of the Attorney General in dissolution proceedings more pronounced than in the case of ecclesiastical corporations. Upon dissolution of an ecclesiastical corporation, and following satisfaction of duly proven creditors' claims, all remaining "property, goods, or money" of the company:

> "shall escheat to the people of this state and upon the winding up of the receivership shall be conveyed to the State Board of Escheats, and shall be disposed of by such board as now provided by law for other escheated property."

In that regard, Section 52 of the Michigan Code of Escheats, 1947 PA 329, MCLA 567.62; MSA 26.1053(52) provides that all property descending to the state as an escheat shall be

deposited into the state treasury "to the credit of the primary school fund to be expended for the advancement of primary training and instruction in the public schools . . ."

That the circuit court erred in several respects is evident from an examination of the court's conduct as measured against the above principles and authorities. First, and most fundamentally, the court was without jurisdiction to order quo warranto relief. The Attorney General was not a party to the suit nor was he requested by any one of the Plaintiffs to initiate quo warranto proceedings. In fact, the Attorney General had no notice of the action whatsoever. Since the Attorney General's participation is absolutely required by GCR 1963, 715, MCLA 600.4501 and *Olesky, supra,* and since Plaintiffs had no standing to initiate quo warranto proceedings, the Court was without jurisdiction and any judgment rendered therein is void.

Second, the Circuit Court utterly disregarded MCLA 450.180 governing the dissolution of ecclesiastical corporations pursuant to quo warranto proceedings. This oversight only serves to underscore the importance of the Attorney General's involvement in corporate dissolution proceedings. Failure to provide the Attorney General with notice of quo warranto proceedings effectively precluded his ability to represent the interests of the people in this case. The mechanism established in MCLA 450.180 for dissolving an ecclesiastical corporation, designed to assure that all interests including those of the people of this State are adequately represented, was entirely circumvented.

Nor can the gravity of this error on the unique facts of this case be overstated. At issue in Plaintiffs' Complaint is substantial acreage in a suburban community, which has enjoyed tax exempt status over a period of years. Having dissolved the corporation while at the same time enforcing a joint business ven-

ture for development of a subdivision, the Court ordered that a receiver shall sell and dispose of all unsold residential lots in the subdivision and apply the proceeds of the sale toward "providing recreational facilities for the plaintiffs, including tennis courts and a swimming pool." (See May 16, 1978 Circuit Court Opinion, pages 9-10). Thus, by failing to follow proper dissolution proceedings, the Plaintiffs have been afforded priority over all other potential creditors of the corporation, to the irreparable detriment of the people of this State.

Moreover, a review of the grounds advanced by the circuit court and Plaintiffs purporting to justify dissolution of a bona fide ecclesiastical corporation by unilateral action of the circuit court confirms the view that the court was without authority to dissolve the Fellowship of Christ Church. The two grounds offered are: 1) that the court may dissolve a bona fide ecclesiastical corporation without notice to the Attorney General by exercising its inherent equity powers; and 2) that *Holden* v *Lashley-Cox Land Company*, 316 Mich 478 (1947), serves as ample authority for granting quo warranto relief.

With respect to the first of the two offered justifications, it is submitted that quo warranto relief is legal, not equitable, in nature:

> "Quo warranto is one of the extraordinary remedies provided by law, and to that extent is somewhat similar to mandamus. Quo warranto proceedings are civil actions and not criminal, and are of a legal, rather than an equitable nature."
>
> MLP, Quo Warranto §1, *citing*, *Heidelmeyer* v *Village of Oakwood*, 222 Mich 331 (1923).

Nor does this differ from the early common law practice:

> *"The dissolution of a corporation and the revocation of its franchises are generally considered matters of legal rather than of equitable cognizance, and unless a court of chancery is especially empowered to divest a corporation of its franchises, the more appropriate remedy for this purpose is by an information in the nature of a quo warranto,* whenever there is a body corporate de facto assuming to act in that capacity, but which from some defect is not authorized to exercise corporate powers."
>
> J. High, *A Treatise on Extraordinary Legal Remedies,* 621 (3d ed, 1896) (Emphasis added).

Moreover, the rule that circuit courts have no inherent jurisdiction in chancery to dissolve corporations, but rather must look to specific statutes conferring jurisdiction, is specifically set forth in the Committee Comment to the first section of Chapter 36 of the Revised Judicature Act regarding "Proceedings Against Corporations," 1961 PA 236, MCLA 600.3601, MSA 27A.3601. The statement is made there that "if the circuit courts were not given jurisdiction under the proposed statutes they would not have an inherent jurisdiction to . . . enforce the forfeiture of corporate charters." The Comment also quotes the following statement of the Michigan Supreme Court, made in *Stamm* v *Northwestern Mut Ben Ass'n,* 65 Mich 317 (1887):

> "The doctrine is clearly established that courts of equity have no jurisdiction, unless it be conferred by statute, to decree a dissolution of a corporation by forfeiture of its franchise either at the suit of an individual or the state."

These references instruct that the circuit court has no inherent equitable jurisdiction to dissolve the Fellowship of Christ Church, unless premised on an independent statutory source of jurisdiction. Having already argued that the circuit court had no jurisdiction under Chapter 45 of the Revised Judicature Act (the quo warranto section) for lack of standing of the parties, it must be ascertained whether any other statutes serve to confer jurisdiction on the circuit court to dissolve a corporation. A close examination of the following sources reveals that no independent jurisdictional basis exists and that, therefore, the court's reliance on its inherent equitable powers is misplaced.

Chapter 36 of the Revised Judicature Act, *supra*, authorizes circuit courts, among other things, to compel an accounting and the payment of restitution and to restrain and prevent alienation of corporate property.[5] However, the jurisdiction given the court may be exercised only at the instance of the Attorney General, a creditor of the corporation, or any director, trustee, officer, or shareholder of the corporation. MCLA 600.3605(3); MSA 27A.3605(3). Since Plaintiffs in the instant case are not properly classified within any of these groups, this section is inapposite. Moreover, an additional, more conclusive reason militates against the use of Chapter 36 as an independent basis for the circuit Court's jurisdiction in the instant case: the provisions of Chapter 36 expressly do not extend to any religious corporation. MCLA 600.3640; MSA 27A.3640.

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[5] MCLA 600.3605; MSA 27A.3605. Dissolution is not listed among the circuit court's powers over corporate property.

A second potential source of jurisdiction is equally unavailing. Chapter 8 of the Business Corporation Act, 1972 PA 284; MCLA 450.1801 *et seq;* MSA 21.200(801) *et seq* provides generally for the dissolution of business corporations. Dissolution is authorized by a judgment of the circuit court in an ac-

tion brought pursuant to the Business Corporation Act, but only a designated group of people may invoke that jurisdiction: board members, shareholders or directors of the corporation. See MCLA §§450.1801(1)(c), .1804-.1805, .1823, .1825; MSA 21.200(801)(1)(C), (804)-(805), (823), (825). Plaintiffs in the instant case are neither board members nor directors of the Fellowship of Christ Church, nor are they shareholders of the corporation. In fact, their sole relationship with the church is that of joint business venturers, pursuant to the circuit court's ruling. But again, a more profound obstacle to the court's reliance on this statute exists: the Business Corporation Act does not apply to non-profit, ecclesiastical corporations. By its terms, the Business Corporation Act applies to "every domestic business corporation *except as otherwise provided* in this Act [the Business Corporation Act] or *by other law.*" MCLA 450.1121; MSA 21.200(121) (emphasis added). "Other law," specifically the ecclesiastical corporation statute, does so otherwise provide by its terms:

> "Every such corporation [religious corporation] shall be a non-profit corporation and subject to the provisions of this Act relating to *non-profit corporations* generally except as specifically otherwise provided." MCLA 450.178; MSA 21.179 (emphasis added).

Two sections of the Non-profit Corporation Act deal with dissolution of non-profit corporations, but neither speaks in terms of conferring jurisdiction on a circuit court. See MCLA 450.119-.119(a); MSA 21.120-.120(1). Accordingly, Section 180 of the Ecclesiastical Corporation Act, MCLA 450.180, *supra,* specifically authorizing dissolution in a quo warranto action by the Attorney General, governs. Since, for reasons stated above, this basis is unavailable to the circuit court, the conclusion is compelled that the circuit court had no inherent equitable power to dissolve the Fellowship of Christ Church or

to effect any other quo warranto relief and that its judgment in that regard is void.

And finally, the court's assertion that *Holden* v *Lashley-Cox Land Company, supra*, serves as authority for dissolution of an ecclesiastical corporation without the involvement of the Attorney General cannot withstand scrutiny and in fact, suggests a serious misconception which the court may have held at the time of decision. In *Holden,* the plaintiffs were minority shareholders who alleged fraud against the majority shareholders, consisting of a single family. In protection of the oppressed minority shareholders, the Michigan Supreme Court affirmed the trial court's decision to dissolve the corporation, appoint a receiver, and distribute the corporate assets to the shareholders. The circuit court in the case at bar cited *Holden* in support of its order of dissolution as follows:

> "The Court makes the following determinations and will sign an Order in accordance with the following opinion. And I might refer counsel to the law of the State of Michigan which provides for the dissolution of corporations *to protect minority stock holders.* It certainly is applicable in the instant case, in such cases where the corporate purpose cannot be obtained. This is the case of *Holden* v *Lashley-Cox Land Company*, 316 Michigan 478." (See May 16, 1978 Circuit Court Opinion page 8) (emphasis added).

Significantly, and in sharp contrast with the plaintiffs in *Holden,* Plaintiffs in the instant case are not stockholders of the Defendant Corporation. Whereas minority shareholders clearly have standing to seek dissolution of their corporation, former members of a religious corporation seeking enforcement of a joint business venture just as clearly do not. In addition, the corporation dissolved in *Holden* was a profit corporation, governed by the dissolution provisions of the

Business Corporation Act in effect at the time. The corporation in the case at bar is a bona fide, non-profit ecclesiastical corporation, governed by the provisions of the Ecclesiastical Corporation Act, *supra*. Involuntary dissolution, as stated in that statute, can only be accomplished in quo warranto proceedings initiated by the Attorney General. *Holden* is of no relevance and cannot serve as authority for the court's action.

RELIEF

WHEREFORE, The Intervenor Attorney General respectfully requests that this Court reconsider its denial of Defendant-Appellants' Application For Leave To Appeal, and on reconsideration reverse the judgment of the Circuit Court.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

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Dated: January 20, 1981

APPENDIX P

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 7

(May 4, 1978)

EXAMINATION OF RESPONDENT OLAF HELLAND

* * *

[22]

THE COURT: With that in mind when you were having these conversations what did you really think you were getting when you put your down payment down, aside from the things that I would get if I moved into Hollywood California or Chicago or Royal Oak Michigan or Birmingham? You get schools, you get churches, you get evergreens. Some places you get mountains. But you don't buy those things. Those things happen to be there. Now, what did you think you were getting for your money? Do you understand what I mean?

A Yes, I do. My feelings, what I bought with my money when I purchased this lot, I bought a part of a Christian community. I acquired the right to be able to participate in that community with my family. I had Christian neighbors whom I could trust, who would help me in time of need. They would help me with my home. They would help me with my children, raising my family. I bought it as a member of the church.

THE COURT: Well, I think maybe you did not understand my question. I will give you an example. I moved into Birmingham a year or so ago. I expected to have friendly neighbors who would help me in time of need, [23] etc., but that was not part of the written contract under which I purchased the land and building and the 70-foot lot, etc.

Now, what I want to know is what you were getting for your money. I don't want to know what the government was going

to furnish or your church would furnish. I want you to tell me as a result of these conversations what you were buying with your dollars.

A With my dollars I bought Lot 6 and I obtained access for my children to the total community for them to be raised in. They had access to those lots —

APPENDIX Q

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 3

(April 25, 1978)

CROSS-EXAMINATION OF RESPONDENT
KENNETH STAUGAARD

* * *

[122]

Q Now, you also state there were general church funds used to satisfy this land contract.

A Yes, sir.

Q Who provided those funds, sir?

A The people who were participating in the church at that time.

Q The members of the church?

A That is true.

Q Those were other than the so-called joint venturers?

A That is correct.

Q There were a substantial number of members who contributed monies to the church?

[123]

MR. COOK: Objection. The word "substan- tial" is too vague to be understood by me.

THE COURT: Objection sustained.

Q Mr. Staugaard, I prepared a list of whom I believe were church contributors during the years 1958 to 64. I would like to go through this list with you and ask you if you recollect whether these persons in fact contributed money to the church.

MR. COOK: Objection, your Honor. The records of the church would speak for themselves as to all the contributions and exactly what the records were, large or small.

THE COURT: Objection overruled.

Q Bryce.

A Your question is what?

Q Was Bryce a member of the church during this period of time, to your recollection?

A Part of the time.

Q Did Bryce ever contribute money to the church?

A Yes.

Q How about Tolls?

A Yes.

Q Charles Jones?

A For a short period of time.

Q Poole?

A Yes.

[124]

Q McCutcheon?

A A short period of time.

Q Crockett?

A Short period of time.

Q Bolger?

A Very short period of time.

Q Were any of the persons I have named so far members of this joint venture?

A No.

Q Taylor?

A Short period of time.

Q Carmen?

A Yes.

Q Bea?

A Yes, a short period.

Q How about Unruh?

A Yes.

MR. COOK: Your Honor, would he let him answer?

MR. BRODER: I'm sorry.

Q Did you have something more on Bea?
A Bea a short period.
Q Bea contributed to the church?
A Yes.

[125]

Q Unruh you said yes?
A Yes.
Q Ross?
A Yes.
Q King?
A Yes.
Q Galavan?
A Yes.
Q McNab?
A McNab was not a member of the church.
Q Hall?
A I don't recollect the name.
Q Callam?
A Yes.
Q Now, Mr. Staugaard, these persons contributed monies to the church. Those monies were used to pay for the land contract isn't that right?
A That is correct.

APPENDIX R

CIRCUIT COURT ORDER COMPELLING TESTIMONY

September 28, 1977

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

ROBERT BOGRETTE, et al.,
Plaintiffs,

vs.

Case No.
77 152370 AZ

ROBERT C. YOUNG, et al.,
Defendants

ORDER GRANTING DEFENDANTS' MOTION
TO COMPEL ANSWERS TO DEPOSITION QUESTIONS

At a session of said Court held in the Courthouse Tower, Pontiac, Michigan on Sept. 28, 1977. PRESENT: Honorable James S. Thorburn.

This Court having heard and considered oral argument of the parties on defendants' Motion to Compel Answers to Deposition Questions, and being duly advised in the premises:

NOW THEREFORE, it is hereby ordered that plaintiffs be and hereby are required to answer those questions as to (1) the identity of the parties to the alleged joint venture; (2) when the alleged joint venture was formed; (3) the specific terms of the joint venture agreement; and, inasmuch as the parties'

counsel have agreed by stipulation for discovery purposes, (4) whether plaintiffs claimed as income tax deductions some or all of the monies contributed to the alleged joint venture, and other matters pertaining to said venture and complaints filed herein.

IT IS FURTHER ORDERED that plaintiffs pay forthwith to defendants' counsel the sum of $300, which represents the reasonable expenses and attorney's fees incurred in obtaining this order.

JAMES S. THORBURN
Circuit Judge

Approved as to form:

(s) John A. Cook
Attorney for Plaintiffs

(s) Andrew J. Broder
Attorney for Defendants

APPENDIX S

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 2
(April 24, 1978)

EXAMINATION OF RESPONDENT KENNETH STAUGAARD

* * *

[97]

MR. COOK: I am handing Mr. Broder photograph Exhibits 7, 8, 9 and 10.

THE COURT: I take it all the pictures of the property were taken at the same time.

MR. COOK: No, your Honor. These are pictures showing the property being developed by personal labor of the parties Mr. Staugaard described.

MR. BRODER: Your Honor, I have the same objection. To the extent Mr. Cook is claiming that only certain persons worked on the property were depicted in these pictures, that would be prejudicial.

MR. COOK: I certainly do not say that.

THE COURT: I don't know what you mean by prejudicial.

MR. BRODER: Your Honor, this witness testified the entire congregation worked on the property. Certain persons are depicted. I hope that won't be taken as a representation that only certain members depicted improved this land.

THE COURT: In other words, you are mak-[98]ing an offer of stipulation that all of the congregation worked on the land?

MR. BRODER: That is right.

THE COURT: Any objection?

MR. COOK: No objection at all.

THE COURT: Fine. I will make that as a finding and will therefore receive in evidence these proposed exhibits.

APPENDIX T

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 6
(May 1, 1978)

CROSS-EXAMINATION OF RESPONDENT JOHN HUGHES

* * *

[23]

THE COURT: Let me ask you this: Didn't they have to do anything else other than buy a lot to join your group, this business enterprise?

A You had to be a Christian and go through all the Concepts. It was a long conversation. It was a two-hour meeting. It was not a case of just back and forth with two or three questions. We discussed many things. But I cannot recall personally what I said or Dr. Young said. We came out with the general consensus of what we were going to do. We agreed. We came out with the one and left it that way. I personally cannot recall what Dr. Young said, only just like blanket statements: "Do you agree?" I'd say, "yes", and things like that. I cannot clarify it further.

Q Mr. Hughes, again, do you recall when you were deposed the second time in October of last year?

A Yes, sir.

Q By my colleague, Mr. Koch?

A Yes, sir.

Q Do you recall being asked the following question and giving the following answer, at page 6 of the transcript:

> Q "Now, you have heard Mr. Staugaard's testimony with regard to other people putting in depos-

its [24] and thereby becoming a member of the joint venture and withdrawing their deposits and drifting out of the joint venture, if you will. What was your knowledge or belief as to how new parties were added to the joint venture?"

A "I think my beliefs would differ a bit from Mr. Staugaard's in the fact that intent and deposit was not — until you became an owner of the property you could not be part of the joint venture. That is the way I believed. I don't think we openly discussed this sort of thing. But this is my belief today."

Do you recall giving that answer to that question?

A Yes, sir.

APPENDIX U

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 6
(May 1, 1978)

EXAMINATION OF RESPONDENT CHARLES COHOON

* * *

[58]

THE COURT: When you had any of these discussions with Dr. Young did he say or did any others in the group say about what you would get in exchange for your payment of the purchase price?

A Yes, sir.

[59]

THE COURT: What were you going to get?

A We would get a nicer home and a nicer place for our children to grow up and a great enviornment, etc.

THE COURT: Well, I don't mean that. What I mean is, normally when you go to a store to buy oranges and you pay 99¢ a half dozen you get six oranges. Do you understand?

A Yes.

THE COURT: What were you going to get here by way of property in exchange for your payment of the purchase price of the lot?

A We would get a better piece of property.

THE COURT: That is a conclusion. You're not telling me anything. What were you supposed to get?

A Well, I wasn't promised anything, to get anything out of it.

THE COURT: You weren't even going to get a lot to live on? You couldn't even build a house on the lot?

A Well, at that point I did not get a lot.

THE COURT: Did you ever get one?

A Yes, sir, I did.

THE COURT: What did you think as a result of these conversations you were going to buy?

[60]

A Well, I thought it was good to have a lot like that.

THE COURT: I know you thought that, but that is not my question. My question is, what was your agreement and who did you make the agreement with?

A We made it with the Advisory Board and the people.

THE COURT: What was your agreement? What were you going to get?

A I'd get this piece of property.

THE COURT: What piece of property? The whole 22 acres?

A No. The lot in the subdivision.

THE COURT: And that is all?

A That is all I have gotten, yes.

THE COURT: You did not answer my question. I keep asking you, what was your agreement as to what you would get?

A That was my agreement, that I get the lot.

THE COURT: That is all?

A Yes, sir.

APPENDIX V

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 4

(April 27, 1978)

CROSS-EXAMINATION OF RESPONDENT
KENNETH STAUGAARD

* * *

[47]

Q Mr. Staugaard, the various financial records which you prepared for the church, were they always truthful to the [48] best of your knowledge and belief?

A Yes, sir.

Q Did they always reflect your understanding and belief of the circumstances that existed at the time you prepared them?

A To the best of my ability.

Q Tell me, have you had any accounting training, Mr. Staugaard?

A Only in college as a minor.

Q You are a graduate engineer, are you?

A Yes.

Q Manager of a computer business?

A Yes, sir.

Q Have you ever prepared personal financial statements?

A Not other than my own and the church's.

Q By personal I mean your own. You have prepared those?

A My own.

Q Tell me, sir, if you were holding property that belonged to someone else would you include that as an asset of yours if you prepared a personal financial return?

MR. COOK: Objection. It is irrelevant and calls for a conclusion.

THE COURT: Objection overruled.

A Sorry?

Q If you were holding property that belonged to someone else would you include it as an asset of yours if you were preparing a personal financial return?

[49]

A Not if it did not belong to me.

Q Mr. Staugaard, I would like to show you what has been marked as Defendant's Exhibit A. I ask you if you can identify this document.

A Yes, I can.

Q What is it, please?

A This is a Michigan Annual Report of 1968 for the Fellowship of Christ.

Q Did you sign that document?

A Yes, I did.

Q To the best of your knowledge and belief was the original of that document forwarded to the State of Michigan?

A Yes, it was . . .

* * *

[52]

THE COURT: That has nothing to do with materiality. The objection is overruled. It may be received in evidence.

I have a question. You signed this as treasurer. Did you prepare this exhibit?

A Yes, I did.

[53]

THE COURT: Well, what real estate did the church own when you signed this? You have real estate, personal property and cash owned at the time of filing January 1 was

$58,670.98. What portion was real estate?

A I'd have to look at my notes . . .

* * *

THE COURT: What real estate was it? I just want to know what description. Was it land in Gaylord, [54] land in Florida?

A Oh, I understand. It was land including the 20 acres shown on the chart, including the furniture of the church —

THE COURT: Wait a minute. Furniture is not real property. I am talking about real property. At the time you certified this annual report what land did the church own? You certified there was real and personal property and cash owned January 1, 1968. It comes to over $58,000. I want to know how much of the $58,000 was real property, not cash or personal property. And I want to know where the land was that they owned.

A The church held title or owned $28,979, according to my records.

THE COURT: That is the amount of money it was worth, right, the real estate?

A The real estate portion.

THE COURT: What is the legal description? Is it a piece of land in Gaylord, Florida, Ohio?

A It includes the land on that exhibit over there.

THE COURT: What other land does it include? What other land did the church own at the time, if you know?

None that I know of. It was just that.

THE COURT: Just that?

A Yes, sir.

[55]

THE COURT: So you were certifying on this annual statement that this real estate was owned by the church?

A Yes, sir.

APPENDIX W

EXCERPT FROM TRIAL TRANSCRIPT, BOOK 3
(April 25, 1978)

CROSS-EXAMINATION OF
RESPONDENT KENNETH STAUGAARD

* * *

[116]

THE COURT: Let me ask you a question. Was it contemplated in your agreement that you say the four of you, or whoever started what has been called joint venture, that the green places in this southwest corner where the church was to be located was to be later conveyed away from the church to the lot owners as common area?

A Yes.

THE COURT: So there'd be no church.

A Yes. According to the restrictive agreement.

THE COURT: Where was the church going to go?

A The church would still have its place to meet, but the title of that entire unsold property called common area would be conveyed to a Home Owners Association by the restrictive agreement.

[117]

THE COURT: So a member of the church would have no interest in the church at all.

A That is true — in the subdivision?

THE COURT: No. When I say the church, if the church building is part of the real estate legally. So my question to you is, if you convey away the real estate then the building goes with it.

A Yes.

THE COURT: If the building goes with it then the church building would be owned by the lot owners, right?

A By the Home Owners Association.

THE COURT: By the Home Owners Association, a member who joined that church would have no interest in the church at all.

A Financial. That is true.

THE COURT: And this was the agreement made with members of the church when they joined the church?

A No. This was in the restrictive agreement.

THE COURT: Assume it was in the restrictive agreement and in the Concept, but when a new member who was not a lot owner joined the church, if he looked at the books and records and listened to what was there wouldn't he normally think that he owned a piece of land on which a [118] church stood? Or was a stockholder in it as a member?

A I believe that is accurate, yes, sir.

THE COURT: Was there any instruction given to new members that they had no interest in anything?

A Not to my knowledge.

THE COURT: Wouldn't that be a deception to new members to bring them in assuming they owned that piece of land because the books and records of the church and the deed, and what not, showed they owned it, and not tell them they didn't have ownership?

A Your Honor, they did have ownership. It was never transferred.

THE COURT: Well, let's not play legalisms. By "ownership" I mean a permanent right to it. What you are saying is that the church had no permanent right to it.

A That is what I believe.

THE COURT: Do you think that was fair to new members coming into the church to deceive them in that fashion?

A It was never our intention to deceive anybody.

THE COURT: But it had that practical effect, did it not, if you didn't tell them the true circumstances?

[119]

A If we didn't tell them it would.

THE COURT: Did you tell them the true circumstances?

A We never had occasion to. The circumstances never occurred.

Q In any event, Mr. Staugaard, you claim that all of this is described in the restriction agreement, correct?

A Yes, sir.

Office-Supreme Court, U.S.
FILED
JUL 6 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1843

In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT C. AND PATRICIA R. YOUNG,
JANE JONES, AND FELLOWSHIP OF CHRIST CHURCH,
PETITIONERS,

VS.

ROBERT AND JUDITH BOGRETTE, WILLIAM AND TRACIE CUPPY,
OLAF AND EMERIN HELLAND, JOHN T. AND BERNICE HUGHES,
KENNETH AND ELIZABETH STAUGAARD, CHARLES AND
CAROL COHOON, AND LEO W. BURTON,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED

1. Did the trial court exceed its authority or violate Petitioner's constitutional rights when it fashioned such equitable relief as it deemed warranted by the proven circumstances, including dissolution of an ecclesiastical corporation and appointment of a receiver?
2. Did the trial court err when it found in substance that a joint venture existed and that the Statute of Frauds was inapplicable?

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OPINIONS BELOW

The unreported opinion of the Michigan Court of Appeals (Civ. No. 78-5213), the unreported judgment of the trial court (Civ. No. 77-152370-AZ) and the Michigan Supreme Court's denial of Petitioners' application for leave to appeal, entered December 3, 1980, are contained in the Appendix to the Petition for A Writ of Certiorari at App. 1d, 1c and 1f, respectively.

The unreported opinion of the trial court (Civ. No. 77-152370-AZ) and the Michigan Supreme Court's denial of Petitioners' Motion for Reconsideration of its December 3, 1980 order appear at App. 1a and App. 1b, respectively, in the Appendix attached hereto.

JURISDICTION

The judgment of the Circuit Court for the County of Oakland was entered on November 22, 1978. On January 28, 1980, the Michigan Court of Appeals rendered an opinion affirming the Circuit Court's judgment. The Court of Appeals denied Petitioners' motion for rehearing on March 20, 1980. The Michigan Supreme Court denied Petitioners' application for leave to appeal from the decision of the Michigan Court of Appeals on December 3, 1980. On May 27, 1981, the Michigan Supreme Court denied Petitioners' motion for reconsideration of its order entered December 3, 1980.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

United States Constitution, Amendment XIV, §1:

> "[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Michigan Statutes involved in this case are set forth at App 1h and 1i of the Appendix to the Petition For A Writ of Certiorari To The Court of Appeals of the State of Michigan.

STATEMENT OF THE CASE

This action was commenced by Respondents, as homeowners in a residential subdivision, to prevent Petitioners from absconding to the Province of British Columbia, Canada with proceeds from the sales of real property in the subdivision, which had been dedicated to the use of the homeowners. The subdivision had been developed by a group of individual families, under an agreement in which an ecclesiastical corporation, then controlled by them, was used as a corporate developer and repository of title and funds.

In September of 1958, a Michigan ecclesiastical corporation had been formed by Respondents KENNETH STAUGAARD and JOHN T. HUGHES and one Kathro W. Martin, under the name "Fellowship of Christ." In January, 1960, the congregation of the FELLOWSHIP OF CHRIST, consisting of approximately ten families, decided to search for a meeting place more suitable than the small building they were using at the time. It was discovered that approximately 20 acres of farm land, which included a house and a barn, in Rochester, Michigan, were listed for sale.

Petitioner ROBERT C. YOUNG, the pastor of the FELLOWSHIP OF CHRIST, suggested that the property be acquired and developed as a residential subdivision. The families of Respondents' STAUGAARD, HUGHES and COHOON and Petitioner YOUNG, met several times and agreed that between them they could raise the required $6,000.00 down payment. These individuals would purchase lots in the subdivision and remaining lots would be sold to other interested parties. The proceeds from the sales of these lots would be used to meet the land contract payments and other expenses of purchasing and developing the entire parcel, which would include the construction of a playground, park, swimming pool, tennis court and other amenities.

It was further agreed that the FELLOWSHIP OF CHRIST would act as the developer and, if lot sales did not proceed quickly enough, it would advance money to the venture and would be repaid. At these meetings, the YOUNG, STAUGAARD and COHOON families committed themselves to contribute $2,000.00 each for the down payment. These meetings were held privately and were not conducted as official meetings of the ecclesiastical corporation's Advisory Board or Board of Elders. Thus, the individuals, as a group apart from the church, agreed to undertake the construction of a residential subdivision on the 20-acre farm, providing down payment funds and other funds for the project.

The church was not to act for its own benefit or profit in any way from the venture. The role of the FELLOWSHIP OF CHRIST was to act as the developer, or "sponsor". According to Petitioner ROBERT C. YOUNG, himself, the corporation was: "to conduct the business for the development, to handle finances, to take title of the unsold properties and to provide a decision for who would buy the land and who would not, against a set of rules that we collectively, together, established."[1]

Subsequently, the ecclesiastical corporation's Advisory Board held a meeting to consider the purchase, and the minutes of that meeting refer in general to the purchase, and particularly to the financial commitments of the individual families given at their earlier meetings. Shortly thereafter, an offer to purchase the property, executed by Petitioner ROBERT C. YOUNG on behalf of the FELLOWSHIP OF CHRIST, was delivered to the owners, who accepted it on March 25, 1960. A rider, separately executed by Respondents STAUGAARD and HUGHES and Petitioner YOUNG, was attached to the offer to purchase. The rider contained and

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[1] *See* trial transcript. (Book 2, pp. 19-20).

referred to the plan for subdivision of the entire 20 acres by the four families to be called Heartpeace Hills, drafted prior to making the offer.

The property was surveyed for the purpose of creating a subdivision plan that would include a meeting place for a church and common property for the enjoyment of the residents.

Petitioner ROBERT C. YOUNG prepared a first draft of a detailed plan and agreement for the development, entitled "Concept for Heartpeace Hills." This draft was submitted to the Avon Township Zoning Board to support a request for a change of zoning, after the Concept had been approved by Respondents, STAUGAARD, HUGHES and COHOON as an accurate reflection of the understandings reached in their previous meetings.

After several drafts the final version of the "Concept for Heartpeace Hills" was delivered first to families who had expressed an intention to purchase lots and move into the subdivision, then to the rest of the members of the FELLOWSHIP OF CHRIST. The Concept in its final form is a coherent and businesslike expression of the development plan, sprinkled with biblical references.[2] A Restriction Agreement was also prepared and this document incorporates the Concept document referred to above, by reference.[3]

Under the agreement of the first four families, reflected in the Concept, a person could make a deposit and thereby signify his intention to become a resident. When he actually

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[2] These references were scrupulously ignored by the trial court. See *Jones v. Wolf*, 443 U.S. 595 (1979).

[3] See Restriction Agreement at Appendix 18k of the Petition for Certiorari, particularly Paragraph 22 set forth at App. 25k.

acquired title, the party could build on the lot, enjoy the use of the common areas and ultimately sell his property, at which point he would cease to be a member of the venture and would have no further rights against other parties.

Respondents STAUGAARD and JOHN HUGHES, and Petitioner ROBERT C. YOUNG, constituted the entire membership of the Board of Elders and of the Advisory Board. According to the By-Laws, these were the governing and controlling bodies of the corporation.

Eventually, after years of work and labor to build up the subdivision, deeds to lots were received by the STAUGAARDS, HUGHES, YOUNGS and HELLANDS. Each deed includes an acknowledgment of the grantee that the parcel "forms a part of an approximately 20-acre tract . . . to be hereafter platted and subdivided" and each agrees to be bound by the same. The Restriction Agreement was also executed by the same parties in September, 1974, and was later recorded. The Restriction Agreement was intended and was referred to as applying to the entire tract of approximately 20 acres, including the common areas. Deeds subsequently received by other Respondents were given expressly subject to "restrictions of record."

When each grantee paid for his lot, he intended to receive not only the lot but the right to use the unplatted common property as well, in accordance with the agreements contained in the Concept and the Restriction Agreement. The FELLOWSHIP OF CHRIST held legal title to the unsold properties and the common areas. Eventually title to the common areas was to be conveyed to a Homeowners' Association, to be formed by the residents.

The construction of the subdivision out of a farm was accomplished to a great extent by the personal labor of the Respondents. Most of the work was performed in the early years of

1961-1969, but some was also performed as late as 1975. The work concentrated mainly in the common areas: roads, creek relocation, back filling, utility trenches, gardens, etc.

The Concept[4] called for the construction of two "micro-neighborhoods" and the construction and sharing of facilities to be built upon adjoining open land, including a tennis court, swimming pool, playground, a small stream, park and the meeting place for the church. The two neighborhoods were constructed and separately platted, and the park was installed but the other facilities are not yet completed.

Separate accounts were maintained to monitor the financial relationship between FELLOWSHIP OF CHRIST, as developer, and the individual residents. All deposits and payments toward the purchase of land were separately accounted for and were distinct from any charitable contributions that may have been made to the ecclesiastical corporation.

In late 1968 and early 1969, an abrupt change occurred. Petitioner PATRICIA R. YOUNG announced that she was the "mother of the church" and was to be in full control of the ecclesiastical corporation to the exclusion of the Board of Elders and Advisory Board previously vested with such control. She declared in a meeting of the congregation on November 12, 1968: "I am the mother of this church and shall be until the governments of this dear body are mature enough to manage on their own." Subsequently, Respondent ROBERT C. YOUNG effectively declared that anyone not willing to go along with the full program, including his wife's new role, would be unwelcome. Because of this change the Respondents withdrew as members of the FELLOWSHIP OF CHRIST.

In July, 1975, the FELLOWSHIP OF CHRIST decided to sell the real property held in its name, and allow the Young

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[4] See App. 12k of the Appendix to the Petition for Certiorari.

family and JANE JONES to take the proceeds of said sale and relocate to the Peace Valley Ranch, a commune in British Columbia, Canada.

The Respondents thereupon instituted this action for specific performance of a joint venture agreement, imposition of a constructive trust, accounting, injunctive and declaratory relief and such other remedies as the trial court deemed proper under the proven circumstances. In their Answer, Petitioners asserted the affirmative defense that: "even if an agreement ever existed as Plaintiffs allege (although this is denied by Defendants), the same must be rendered a nullity for failure of consideration, since the Plaintiffs (1) many years ago left the church and (2) have not contributed to the development of the Subdivision, payment of taxes and the like."

Confronted with the multiplicity of parties and interests to be considered, and the constructive fraud that would be perpetrated by the Petitioners if not prevented from proceeding as they intended, the trial court entered its Opinion and judgment as a court of equity to afford complete relief. The court recognized and declared Respondents' interest as joint venturers and the beneficiaries of a negative reciprocal easement. To assure completion of the subdivision in a manner that could be monitored by the Court, it provided for a receiver to take possession of the property of the joint venturers and complete its development.

In order to fully protect the interests of all concerned, the Court deemed it proper to dissolve the ecclesiastical corporation as a part of the relief to be granted. The evidence showed an intent on the part of Petitioners YOUNG and JANE JONES to take not only Respondents' property but also the general property and funds of the ecclesiastical corporation to Canada. There, it would be contributed to or used for the benefit of an established commune unrelated to the corporation or its members. The interests of any persons who might

claim to be members of the ecclesiastical corporation might go unprotected if the Court allowed the YOUNG's and JONES to proceed with any property not directly affected by other parts of the Court's order.

In addition, the Court found that a major purpose of the corporation had been to act as the developer of the property, as well as to serve the pastoral needs of the few families who had formed or attached themselves to it. With the development in the hands of a neutral receiver and the officers and directors of the corporation on their way out of the country, the corporation was in no position to fulfill its purposes. By broadening the receivership to include the distribution of the corporation's rightful property, the interests of all concerned would be fully protected. Any members who came forward could perpetrate the use of this property in a new ecclesiastical corporation which they might voluntarily form, or take their respective shares and go their separate ways, as they might freely choose.

In taking these steps, the Court did not take sides in any religious dispute, or award church property according to any view of the religious beliefs of any person. It separated property rightfully belonging to persons who were not members, according to neutral principles of property law, from property of the church itself. It then preserved all church property for those who might claim to be members and rightfully entitled to it as such.

In all of this, no "faction" appeared before the Court as a result of any religious dispute, and no property was awarded to any faction on the basis of such dispute. The Court recognized that the withdrawal of the Respondents (except BURTON, who was never a member) from the church was motivated by a religious disagreement, as contrasted with an abandonment of the development venture which might adversely affect their property rights. Therefore, the agreement between

the parties was not a nullity, contrary to the affirmative defense of Petitioners. The withdrawal from the church was explained by the inability of the member-Respondents to adhere to the changing religious dictates of the Youngs, and did not amount to a failure of consideration. Respondents did not claim to be "right" in their religious position, and the Court did not decide the case based on any view of which side was right or wrong in its religious beliefs, or whether either side had adopted a religious doctrine that was contrary to the original compact of the members.

The withdrawal of the Respondents from the church did have an impact upon the joint venture, however, since it eliminated the element of control exercised by the homeowners through membership on the church's Board of Elders. The trial court was of the opinion that the Young's foresaw and intended this result. However, the court's finding is focused on the property law results of such action and is in no way dependent upon a resolution of whether the Young's had departed from or adhered to the "true" beliefs of the church. In every instance the Court based its decision upon neutral principles of law.

REASONS FOR DENYING THE WRIT

I.

INTRODUCTION

Petitioners seek to persuade this Court that this case involves important constitutional issues regarding the Free Exercise and Due Process Clauses of the First and Fourteenth Amendments of the United States Constitution. In fact, the right of religious freedom played no role in the instant case. The case involved real property, joint venture and issues of constructive trust. The Petitioners were fairly apprised of the

seriousness of Respondents' allegations, were given the opportunity to defend through a full scale trial on the merits and are deemed to be aware of the broad legal and equitable powers of a trial court to afford complete relief.

The trial court's decision is well supported by statutory and case law. The Michigan Court of Appeals affirmed the trial court's judgment citing further case law in support thereof or finding issues raised on appeal by Petitioner to be completely without merit.

Simply stated, there are no important questions of federal law to be decided, and, in particular, there are no questions of such substance as to require the attention of this Honorable Court.

II.

PETITIONERS' RIGHT TO DUE PROCESS OF LAW WAS NOT VIOLATED IN THE INSTANT CASE BECAUSE NEITHER THE COMPLAINT NOR THE TRIAL COURT'S INSTRUCTIONS PROHIBITED THE TRIAL COURT FROM FASHIONING SUCH EQUITABLE REMEDIES AS IT DEEMED WARRANTED BY THE CIRCUMSTANCES

A Complaint must contain a statement of facts without repetition upon which the pleader relies in stating his cause of action.[5] Respondents' Complaint clearly and completely stated the facts relied on, specifically identified the theories of recovery and requested certain forms of legal and equitable relief, as well as: "such other and further remedies and relief,

[5] Michigan General Court Rules (hereinafter "GCR") 1963, 111.1.

legal and equitable relief as this court may deem proper in the circumstances. . . "[6]

Though much talked about in the Petition for Certiorari, the trial court's statement binding the parties to the facts and relief requested in the Complaint states nothing more than the obvious. Respondents' Complaint contained all facts that were ultimately proven as well as a general prayer for equitable relief. The trial court clearly did not intend in advance, to limit its own power to fashion such remedy as it might deem proper at the conclusion of the trial and in view of the proven circumstances.

It was unnecessary for Respondents to specifically identify "fraud" as a theory of recovery in order to put Petitioners on notice. Their actions as specified in the Complaint would inherently result in fraud upon the homeowners in the subdivision if subversion of the property were not prevented. *Georges v. Ballard*, 20 Mich App 554, 557 (1969). The commission of "any fraud or deception" as well as the misuse of its franchise and privileges and any misapplication of funds or property, are also grounds for a receivership and equitable distribution of the property of an ecclesiastical corporation. MCLA §450.180

Petitioners mislead this Court by inferring that the trial court found Petitioners guilty of fraudulent inducement when such an allegation was not contained in Respondents' Complaint. Petitioners are correct in stating that Respondents did not allege fraudulent inducement nor did Respondents desire to make this an allegation. Respondents, however, alleged facts that if proven would constitute constructive fraud on the part of Petitioners. These facts were proven at trial and the trial court properly found the existence of constructive fraud

[6] Cohoon Complaint, Paragraph (e), Appendix to Petition for Certiorari at App. 10k.

and not fraudulent inducement as Petitioners would lead this Court to believe.

In *Union Guardian Trust Co. v. Emery*, 292 Mich 394, 404 (1940) the Michigan Supreme Court defined constructive fraud:

> Constructive fraud has been defined as a term applied to a great variety of transactions which equity regards as wrongful, to which it attaches the same or similar effects as those that follow from actual fraud, and for which it gives the same or similar relief as that granted in case of actual fraud.... Constructive fraud has been evolved to designate what is, in essence, nothing more than receipt and retention of unmerited benefits.

The evidence at trial clearly showed that at some point Petitioners formed the intention to act contrary to the original agreements with regard to the subdivision property. The trial court found the Petitioners to have perpetrated a constructive or resulting fraud by breach of their trust and other fiduciary duties as joint venturers when it stated:

> That the conduct of the Defendant officers of the Corporation as outlined constitutes a fraud and a breach of trust on the rights of the Plaintiffs and justifies a court of equity on the Complaint of the Plaintiffs to compel restitution of funds improperly taken; ...[7]

Thus, the trial court properly found the existence of constructive fraud, in accordance with facts alleged and proven, and granted equitable relief to Respondents as requested in their Complaint.

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[7] Circuit Court Opinion, App. 6a.

III.

THE TRIAL COURT DID NOT EXCEED ITS AUTHORITY OR VIOLATE THE PETITIONERS' RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS WHEN IT APPOINTED A RECEIVER AND DISSOLVED THE ECCLESIASTICAL CORPORATION

To the extent that an ecclesiastical corporation is involved in the instant case, Petitioners attempt to seek shelter in the protections afforded by the First Amendment. However, as noted by the court, there were many reasons to doubt that the ecclesiastical corporation involved in the instant case was a bona fide and continuing church organization. Although the corporation was a registered legal entity in good standing with the State of Michigan, the trial court determined that in reality it was "a financial arrangement used by the individual defendants as a subterfuge and fraud on the people of the state and the plaintiffs."[8]

Essentially the only members of the so-called church were Petitioners ROBERT C. and PATRICIA R. YOUNG, possibly their children, and JANE JONES. The trial court found that they intended to subvert Respondents' time, energy, money and property to their own use and "they used as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation."[9] The instant action was instituted when these same individuals were caught in the act of preparing to abscond with Respondents' property and leaving the country. Certainly the First Amendment protection afforded the free exercise of religion was not intended to extend to and assist persons engaged in a scheme to defraud persons transacting business with an ecclesiastical corporation, or its own members.

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[8] Circuit Court Opinion, App. 4a.

[9] Circuit Court Opinion, App. 5a.

Assuming *arguendo* that the Petitioners' activities are entitled to First Amendment protection, notwithstanding the taint of fraud and impropriety that is present in the instant case, the trial court did not violate the dictates of the First Amendment.

The State of Michigan has a legitimate interest in resolving property disputes involving a church's claim of title, and a civil court is a proper forum for such a resolution. *Presbyterian Church In The United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). Furthermore, civil courts do not inhibit the free exercise of religion merely by opening their doors to disputes involving church property. *Id.* This court has held that in resolving church property disputes a court must apply neutral principles of law. *Jones v. Wolf*, 443 U.S. 595 (1979).

In the instant case the trial court expressly acknowledged the Constitutional barrier against civil court interference in the internal affairs of a church,[10] while questioning its applicability under the circumstances presented. The court then proceeded to decide the parties' dispute strictly upon the neutral principles of joint venture, negative reciprocal easement and corporate law. No ecclesiastical questions of church doctrine were decided. (Although the Petitioners assert that the trial court resolved questions of church doctrine, no specific example is provided in the Petition for Certiorari.)

The trial court never attempted to decide the merits or the propriety of the Respondents' religious reasons for their separation from Petitioners. The trial court simply recognized that the parties stopped associating with each other, under circumstances that did not defeat Respondents' property rights.[11] Based on an analysis of the testimony, the Restriction Agreement, the subdivision "Concept" document, deeds and other evidence, the trial court resolved the parties' dispute

[10] Circuit Court Opinion, App. 4a.

[11] Circuit Court Opinion, App. 3a.

regarding the real property by applying neutral principles of law.

At page 20 of the Petition for Certiorari the Petitioners suggest certain "neutral principles" that the trial court could have employed, namely: consideration of title to the subdivision, Respondents' withdrawal from the FELLOWSHIP OF CHRIST, and the decisions of the governing body of the ecclesiastical corporation. These are *facts* and not neutral *principles of law*. Contrary to Petitioners' assertion, they were considered by the trial court. The court recognized that: (1) the ecclesiastical corporation held *legal* title to the subdivision,[12] (2) Respondents' separation was contrived by Petitioners in an attempt "to assume control over the land and money held by the church in separate book accounts,"[13] and (3) as a direct result of the fraudulent activity of the Petitioners and the attendant withdrawal by Respondents, Petitioners were left in complete control of the ecclesiastical corporation.[14] That is, Petitioners constituted the governing body of the corporation through the usurpation of control that was once shared mutually by all parties. Having considered these facts, together with other evidence, the trial court rendered a decision based on neutral principles of law.

The fact that the developer of the subdivision in question was also an ecclesiastical corporation does not insulate the corporation from liability on its legal contracts, or deprive those with which it deals of the right to assert the property rights created by such contracts. When a church takes title to property in trust for others and not for its own benefit, neutral principles of law are operative to enforce the trust.

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[12] Circuit Court Opinion, App. 3a.

[13] Circuit Court Opinion, App. 3a.

[14] Circuit Court Opinion, App. 3a.

In the instant case, the role of the FELLOWSHIP OF CHRIST was to act only as "developer" or "sponsor" of the subdivision project, and not to make a profit from the venture. The agreements and intentions of the parties were expressed in writing by Petitioner ROBERT C. YOUNG himself. As the instigator of the project and the drafter of the Concept document and the Restriction Agreement, through which the project was put into effect, he and the ecclesiastical corporation for which he also acted are estopped from denying the clear meaning of the words he used.

In the first place, Petitioner YOUNG himself used the word "sponsor" in describing the role of the church, in the original meetings of the four families, in the Concept document and later in explanations to the congregation:

> The *sponsor* of Heartpeace Hills is the Fellowship of Christ, a community church located at 71 Livernois, Rochester, Michigan.[15] (emphasis supplied)

The term "sponsor" is defined as:

> A surety; one who makes a promise or gives security for another, particularly a god-father in baptism.
>
> In the civil law, one who intervenes for another voluntarily and without being requested.[16]

There is in this definition no connotation, let alone a denotation, of any beneficial interest in any subject matter with which the sponsor might happen to deal. A sponsor simply acts for someone else. An attorney drafting these docu-

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[15] See Concept for Heartpeace Hills at App. 13k of Appendix to the Petition for Certiorari.

[16] Black's Law Dictionary, 4th ed, p. 1574.

ments might have used the term "nominee," for that is the legal capacity in which the sponsor in the instant case is acting. The ecclesiastical corporation signed the land contract and certain contracts for construction that could not conveniently be done by the individual families. But it did so as sponsor for the families who intended to become residents and who would actually purchase lots. It did not do so for its own benefit of profit, as was established in the uncontradicted testimony of Respondent STAUGAARD.[17]

In contrast to the position and intention of the ecclesiastical corporation, the individual families definitely intended to benefit and profit by the project, by being able to enjoy their homesites, the common areas and the community as a whole, and to eventually realize a monetary gain when they sold their homes and the privileges and easements appurtenant to them as set forth in the Concept, Sec. II.[18]

The position of the resident families is clearly indicated in the Concept document.[19] Section I states the need for "expressing community in better forms." Section II defines the community as consisting of "two micro-neighborhoods," each located on a cul-de-sac and containing 11 homesites, the "spirit" of which is "strengthened by the sharing of certain desirable facilities, such as a tennis court, swimming pool, playground equipment, a small stream, park, and the meeting place for the Church." *All* of these, including the church's meeting place, are thus dedicated to the community and its residents. It should therefore be no surprise to anyone who read this or to whom it was read that the residents would claim that these properties are held in trust for their use.

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[17] See trial transcript. (Book 2, p. 15)

[18] See Concept for Heartpeace Hills at App. 12k of Appendix to the Petition for Certiorari.

[19] Id.

The playground and meeting place are in existence in the 3.27 acre common area, and the rest are yet to be constructed. The record demonstrates that they were intended for the "outlot" area between the two micro-neighborhoods. That the entire land area was intended to be a single subdivision under this plan is expressly stated in Section II of the Concept: "We propose an overall plan for establishing and maintaining a residential community of the highest order."

That the church was merely a sponsor and not a part of the community per se, is also indicated in Section V of the Concept where it states: "The Heartpeace Hills community is a fellowship of *individual families . . .* " (Emphasis added) The "Homeowners" adopting the Concept and buying a lot in the subdivision are bound by an express agreement in Section VII that they "shall build their home and maintain their property in accordance with the Restrictive Agreement adopted by the Advisory Board and ratified by the Fellowship of Christ."

Petitioners' arguments regarding the propriety of the trial court's dissolution of the ecclesiastical corporation and appointment of a receiver deserve little attention. The facts alleged in Respondents' Complaint put the Petitioners on notice that, if proven, Petitioners would be found to have perpetrated a constructive fraud. According to Michigan law, the commission of any fraud, deception, breach of trust or misapplication of corporate assets by a corporation or its officers, are grounds for dissolution and appointment of a receiver. MCLA §450.180. *Edison v. Fleckenstein Pump Co.*, 249 Mich 234 (1930); *Stamm v. Northwestern Mutual Benefit Association*, 65 Mich 317 (1887).

The trial court did not exceed its jurisdiction when it dissolved the ecclesiastical corporation and appointed a receiver. Respondents' Complaint included a request for specific forms of relief together with a general prayer for such

equitable relief as the trial court deemed proper under the proven circumstances. Respondents did not specifically pray for the dissolution of the ecclesiastical corporation or the appointment of a receiver. However, it is a well established tenet in Michigan and federal law that a trial court must grant the relief to which a party is entitled, whether or not he has specifically requested it. F.R.C.P. 54(c); *Carlson v. Williams*, 348 Mich 165 (1957); and GCR 1963, 518.3 which provides in part "... every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings".

Charged with knowledge of Michigan law and having received actual notice of the facts alleged in Respondents' Complaint, Petitioners received adequate notice that dissolution of the ecclesiastical corporation and appointment of a receiver were forms of relief within the equitable jurisdiction of the trial court in the instant case. A full scale trial was held in which Petitioners were given an opportunity to defend Respondents' allegations. Petitioners' constitutional rights were not violated by the equitable relief granted by the trial court.

Petitioners' contention that Michigan courts are without jurisdiction to dissolve an ecclesiastical corporation, in the absence of *quo warranto* proceedings by the Michigan Attorney General, is equally without merit as exemplified by the Michigan Supreme Court's denial of the Attorney General's Motion for Reconsideration.[20] The Constitution does not restrict a party to any particular form of procedure, or point out a mandatory choice of process when legally recognized alternatives are available. Once the statutory grounds for action appeared in the evidence, Petitioners had no constitutional right to demand that *quo warranto* proceedings be used

[20] See Order of the Michigan Supreme Court, dated May 27, 1981, App. 1b

rather than the general powers of the court, since it would be the court that would make findings of fact and determine the relief in either case. The Petitioners have no constitutional right to have the corporation dissolved by action intitiated by the state Attorney General rather than by the court itself. The matter is strictly one of state law.

MCLA 450.180 does authorize the Michigan Attorney General to initiate *quo warranto* proceedings for the purpose of petitioning a court for the receivership of an ecclesiastical corporation. However, the involuntary receivership of an ecclesiastical corporation is not the exclusive domain of the Attorney General. The instant action was not based upon the *quo warranto* statutes nor was *quo warranto* relief requested by Respondents. While the Attorney General is authorized by statute to initiate a petition for dissolution, the legislature has not deprived the judiciary of its general powers in equity to grant complete relief in complex matters brought before it. This is implicit in the decision of the Michigan Court of Appeals and is undisturbed by the orders of the Michigan Supreme Court.

In view of the court's findings of constructive fraud, breach of trust and misapplication of corporate assets, and the imposition of a receivership, it was well within the equitable jurisdiction of the trial court to dissolve the ecclesiastical corporation. While MCLA 450.180 does not specifically refer to dissolution of the entity, the complete distribution or escheat of its property, together with the court's finding of no continuing intent or ability to fulfill its corporate purposes,[21] justifies the dissolution under the general authority of MCLA 450.178, which states: "Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided."

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[21] Circuit Court Opinion, App. 6a.

The provisions of the same General Corporation Act addressing non-profit corporations[22] incorporate the provisions of the Act dealing with corporations generally. In these provisions, at MCLA 450.65, the matter of dissolution is specifically addressed, and states in pertinent part:

> "... any corporation, whose assets had been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction over such proceedings; ...."

In addition, based upon the applicability of general corporate law to ecclesiastical corporations, in absence of specific statutory provision to the contrary, the trial court was correct in its holding that under Michigan law the corporation can be dissolved when its corporate purposes cannot be attained.[23] *Holden v. Lashley-Cox Land Company*, 316 Mich 478 (1947).

IV

THE TRIAL COURT PROPERLY FOUND THAT THE STATUTE OF FRAUDS WAS INAPPLICABLE AND IT DID NOT ERR WHEN IT FOUND IN SUBSTANCE THAT A JOINT VENTURE EXISTED

A. The Statute of Frauds is Inapplicable.

The trial court, as well as the Michigan Court of Appeals, properly held that the Statute of Frauds was inapplicable in the instant case. Respondents direct this Court's attention to

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[22] MCLA 450.117

[23] Circuit Court Opinion, App. 6a.

the Opinion of the Michigan Court of Appeals,[24] in which the appellate court cites several Michigan cases which demonstrate that the part performance doctrine removes an oral contract from the operation of the statute of frauds and that reciprocal easements arising by operation of law need not be in writing.

B. Respondents Established the Existence of a Joint Venture by a Preponderance of the Evidence

In *Hathaway v. Porter Royalty Pool Inc.*, 296 Mich 90 (1941), the Michigan Supreme Court defined a "joint venture" as follows:

> The courts have not laid down an exact definition of what constitutes a joint adventure nor is it possible to enunciate a general rule by means of which the question as to what amounts to a joint adventure can be answered, because such an answer depends largely on the terms of the particular agreement in controversy, upon the construction which the parties have given it, upon the nature of the undertaking, as well as upon other facts.
>
> It can be said that a joint adventure contemplates an enterprise jointly undertaken; that it is an association of such joint undertakers to carry out a single project for profit; that the profits are to be shared, as well as the losses, though the liability of a joint adventurer for a proportionate part of the losses or expenditures of the joint enterprise may be affected by

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[24] Opinion of the Michigan Court of Appeals, dated January 28, 1980, App. 1d of the Appendix to Petition for Writ of Certiorari.

> the terms of the contract . . . There must be a contribution by the parties to a common undertaking to constitute a joint adventure. . . . and a community of interest as well as some control over the subject matter or property right of contract. . . . *Id.* at 102-03. (citations omitted)

As to the method of determining the relationship, the *Hathaway* Court said:

> Whether the parties to a particular contract have thereby created, as between themselves, the relation of joint adventurers or some other relation depends upon their actual intention, and such relationship arises only when they intend to associate themselves as such. This intention is to be determined in accordance with the ordinary rules governing the interpretation and construction of contracts . . . *Id.* at 103. (citations omitted)

The main elements of the parties' joint venture relationship in the instant case, the manner in which they have been pleaded and proved and citations of law in support are as follows:

(1) *An Enterprise Jointly Undertaken.*[25] It was proven that the Respondents and Petitioners ROBERT C. and PATRICIA R. YOUNG, "joined together in mutual applications of money, thought, time and effort and construction materials in a common effort to build a subdivision complete with roads, parks, swimming pool, recreational areas and buildings as well as a church structure".[26]

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[25] Cohoon Complaint, Paragraphs 4, 5 and 7, Appendix to Petition for Certiorari at App. 3k and 4k.

[26] Circuit Court opinion, App. 3a.

(2) *The Carrying Out of a Single Project for Profit.* [27] An expected beneficial result is all that is required and not necessarily an intention to earn a "profit" as the word is used in the common business sense. 46 Am Jur 2d, *Joint Ventures,* §7, p. 28. The fact that religious reasons formed a part of the parties' motivation in entering into the joint venture does not detract from Respondents' expectation of realizing a beneficial result, financially or otherwise.

At trial, Respondents proved that the profit expected was: (a) the creation of a beautiful community complete with amenities to be constructed upon the common areas and to be shared equally by individual resident families; and (b) the inherent possibility of realizing a financial gain upon sale of lots (and homes) acquired by them in the course of the venture due to the value added to the enterprise.

(3) *The Sharing of Profits and Losses.*[28] As stated above, the immediate benefits and any ultimate financial gains were to be shared and equally available to all. Losses were also to be shared because of the commitment and actual practice of each of the venturers to support the venture to the best of his or her ability. In accordance with Michigan case law, no more is required to establish the relationship. *See e.g. Summers v. Hoffman*, 341 Mich 686 (1955) and *Hathaway*, *supra*, where the Michigan Supreme Court stated:

> The expenses of the management of the pool were to be paid out of the proceeds received for the oil before the proportionate 'dividends' were paid to pool members. There were no losses to be paid by the

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[27] Cohoon Complaint, Paragraphs 3 and 9. Appendix to petition for Certiorari at App. 2k and 5k.

[28] Cohoon Complaint, Paragraphs 4, 6 and 7. Appendix to Petition for Certiorari at App. 3k and 4k.

> members due to the fact that, because of the inherent nature of the enterprise, no losses could result. 296 Mich 90, 104.

In the instant case, all expenses of acquisition and development were to be paid for in full by the sale of lots. In practice, this was done by the parties under the arrangement, although there are some lots yet to be sold.

(4) *Contribution to a Common Undertaking.*[29] Each of the parties to the venture contributed money, labor and skills to the project to the best of his or her ability and as the needs arose.

(5) *Community of Interest and Common Control Over the Subject Matter or Property Right.*[30] The parties had a community of interest in that they expected to share mutually in the benefits from the venture and depended upon each other to support the project to the best of his or her ability in labor, skills and funds. Control was effectuated by the use of an existing ecclesiastical corporation, the FELLOWSHIP OF CHRIST. This provided a convenient executive body in which the venturers were all either officers or could expect to have a voice according to the by-laws adopted.

In Michigan, corporations have often been utilized as a means of effectuating a joint venture. *See e.g. Hathaway, supra.* The corporation's Advisory Board and officers owed a duty to themselves and the other venturers to carry out the trust placed in the corporation. The fact that the corporation was in existence prior to the commencement of the joint venture is unimportant. *Latimer v. Piper,* 261 Mich 123 (1933).

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[29] Cohoon Complaint, Paragraphs 5 and 7. Appendix to Petition for Certiorari at App. 3k and 4k.

[30] Cohoon Complaint, Paragraphs 3, 4, 5 and 8. Appendix to Petition for Certiorari at App. 2k, 3k and 4k.

(6) *Breach or Threatened Breach of Agreement, Trust and Fiduciary Duties:*[31]

"The law requires that the highest degree of integrity, full disclosure and fairness be maintained among coadventurers". *Latimer v. Piper*, 261 Mich 123, 134 (1933).

In the instant case, the Petitioners have, among other things, (a) forced the other joint venturers out of effective control, (b) discontinued the development of the residential community leaving it in a partially completed state, (c) sought to destroy the common areas reserved for the joint use of the church and individual lot owners and exclude the other joint venturers from mutual enjoyment thereof, (d) have attempted to sell the common areas for uses not contemplated, (e) stated their intent to leave the country with the proceeds of all common areas and lots which are still in the name of the ecclesiastical corporation.

The foregoing demonstrates that the elements of a joint venture were pleaded and proven by Respondents. The findings of the trial judge, who had the advantage of seeing and hearing the witnesses, are in accord.

At trial, Petitioners chose not to be sworn, testify or offer any refutation of the testimony of the Respondents. Their primary defense was based upon cross-examination of the witness regarding their understanding of the legal concepts and conclusions involved. Even at this point in the proceedings, Petitioners attempt to isolate and remove from context portions of testimony of Respondents' lay witnesses which contain their conclusions regarding the legal concept of "joint venture". These questions are properly determined only by

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[31] Cohoon Complaint, Paragraphs 10 and 11. Appendix to Petition for Certiorari at App. 5k-8k.

the actions and statements of the parties when the joint venture was conceived and by their performance under it. They are also answered to a great extent by the intrinsic nature of the project that the venture was formed to accomplish.

At the completion of trial and after considering the totality of the testimony and documentary evidence, the trial court understood the difficulty of Respondents' witnesses in dealing with such conclusionary questions and found in Respondents favor based upon the objective facts that were proven and undisputed at the trial, and in many instances were admitted by stipulation of Petitioners' counsel.

V.

CONCLUSION AND RELIEF REQUESTED

This Court should not be mislead by Petitioners' attempt to persuade it that a violation of constitutional rights has occurred in the instant action. In view of Petitioners' fraudulent conduct and their breach of trust and fiduciary duties to Respondents, the trial court properly exercised its discretion in fashioning equitable relief in accordance with the pleaded and proven circumstances. The dissolution of an ecclesiastical corporation in the exercise of the equitable jurisdiction of a trial court does not automatically invoke the protections of the First Amendment to those affected by the dissolution. Particularly when those same persons have been found to have perpetrated a fraud and to have used the ecclesiastical corporation as a subterfuge to camouflage their fraudulent activity.

For the foregoing reasons, the Respondents respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,
COOK & PRINGLE, P.C.

By: JOHN A. COOK

and: ALEXANDER J. LELLI, JR.
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Dated: June 30, 1981

APPENDICES A AND B

APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

ROBERT BOGRETTE, et al,
Plaintiffs

-vs- No. 77-152370 AZ

ROBERT C. YOUNG and PATRICIA R. YOUNG, his wife, and JANEY JONES, and FELLOWSHIP OF CHRIST CHURCH, an Ecclesiastical Corporation,
Defendants

The Opinion of the Court in the above cause before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan on May 16, 1978.

APPEARANCES:

JOHN A. COOK,
Appearing on behalf of the Plaintiffs

ANDREW J. BRODER
Appearing on behalf of the Defendants

Pontiac, Michigan
May 16, 1978

* * *

JOHN A. COOK: The plaintiffs are ready, your Honor.

ANDREW J. BRODER: Ready, your Honor.

THE COURT: The plaintiffs in this cause advance theories of joint venture, constructive trust, negative reciprocal easement and general plan, coupled with a prayer for an accounting.

The defendants deny the existence of a joint venture and any resulting constructive trust and, therefore, the need for an accounting as well as the creation of any negative reciprocal easements or the existence of any general plan outside the recorded covenants running with the land, asserting the statutes of fraud and limitations and the parole evidence rule as devices to avoid the consideration of oral testimony.

The undisputed facts are that the principal plaintiffs and defendants Robert C. Young and Patricia R. Young were a group of people including some of the plaintiffs whose common interest was a particular Christian belief, and a gathering together to live their lives on the 22 acres of land in litigation. They agreed to live by and be bound by "Christian principles". I might add there was an awful lot of religion in this case but very little Christianity.

In consideration of a price paid each married couple was to have conveyed to them in fee simple a residential lot upon which they would build a house which they would own. They were to worship in common under the spiritual guidance of the defendant, Robert C. Young, in a church building to be located on the 22 acres. They were to share tennis courts, a swimming pool and recreational and park facilities as a part of the 22 acres, and the lives of all were to be bound together religiously, socially and property-wise with the thought in common that "Christian principles" would be the constant determining factor in their lives. It was agreed that they would form an Ecclesiastical Corporation to be known as the

Fellowship of Christ, a now defendant, that would hold legal title to the 22 acres.

This Court is of the opinion that until the time of the disagreement which came about between the defendants and the plaintiffs no one discussed such esoteric questions as property rights, but to the contrary, joined together in mutual applications of money, thought, time and effort and construction materials in a common effort to build a subdivision complete with roads, parks, swimming pool, recreational areas and buildings as well as a church structure.

All members of the governing board of the defendant church up until the plaintiffs and the Youngs separated were, with the exception of the defendant Robert C. Young, plaintiffs.

The lots in the subdivision were to be sold to individual Christians of spiritual convictions similar to their own, and all would join together in creating a "Garden of Eden". All went well and according to plan for a period of time until Satan entered the Garden. For reasons that are material to this mundane litigation the individual plaintiffs and defendants stopped associating with each other.

The Court is of the opinion that the defendants Young brought about the separation in order to assume control over the land and money held by the church in separate book accounts. The lack of activity by the plaintiffs in the spiritual aspect left the defendant Youngs in complete control of the corporate defendants.

As an interesting aside, although the Youngs were present throughout the proceedings they did not take the stand in the presence of the Court and the Court did not have the opportunity to examine their candor and demeanor. The Court had to rely upon the deposition of Robert Young, which was introduced into evidence. I might indicate that a careful reading of that deposition leads one to the only conclusion that the

testimony of Robert Young was incredible. It was inconsistent. It was unresponsive. It was not truthful.

The by-laws of the corporate defendant, according to the testimony of the pastor, defendant Robert C. Young, provided that the pastor would select the Advisory Board consisting of, as it did, four people, although the written by-laws provided it could have had 12. This Advisory Board would manage the affairs of the church, i.e., the corporate defendant.

At the time of the taking of the deposition of the defendant Young the corporate defendant seemed to consist of the pastor, his wife and their family, and one Janey Jones. It was a church without a congregation. The house that the Youngs lived in was the house that had originally been used from the time of incorporation for church purposes or a meeting of the congregation when the plaintiffs were still associating with the individual defendants. So in point of fact the corporate asset, i.e., the church, was being used in abrogation of the church purpose by the defendant Youngs as their home where they lived together with their children.

There are rules of law which prohibit the Concept under which all the parties originally agreed to be bound. The restriction of the sale of lots to persons because of race, creed or color, as was done in this case, is prohibited by the Constitution of the United States. The Constitution of the United States further provides for separation of church and state. There is no doubt that a Court cannot interfere in the internal affairs of a church because of this constitutional barrier. However, a careful study of the record in this case can only lead to the conclusion, and this Court reaches this conclusion, that the so-called ecclesiastical corporation is not a church. If it ever was one it is no longer and has not been for many, many years, and has not been in a position to attain its corporate purpose. As a matter of fact, it is not a church but a financial arrangement used by the individual defendants as a subterfuge and fraud on the people of the state and the plaintiffs.

A careful reading of all of the documents introduced into evidence and the testimony of the plaintiffs, and in particular a careful reading of the deposition of the defendant Robert C. Young, leads the Court to the conclusion that the defendant Robert C. Young and his wife intended to subvert gifts of time, energy, money and property to their own use. That they used as a cover for their unlawful and immoral actions the subterfuge or fiction of an ecclesiastical corporation.

Again, the testimony of the defendant Robert C. Young, represented by his deposition only, is incredible.

Throughout the life of the corporate defendant the individual defendants Robert C. Young and Patricia R. Young used the corporate assets as their own, even conveying their own home to the church.

This Court finds as a matter of fact there was a general plan for the development of the 22 acres as a residential subdivision. That in addition to the covenants running to the land which were reduced to writing, the whole area which bisected the two subdivisions recorded as Heartpeace Hills and Heartpeace Hills No. 2, designated as an "Outlot" on the Buckerfield Exhibit 33 introduced into evidence, and the portion designated "Exception for Church", also unplatted, were to be used in common for recreational purposes by all of the lot owners who were part of this development, plan or scheme.

The statute of frauds and the statute of limitations are inapplicable. First, because a general plan or negative reciprocal easements are exceptions to and avoid the statute of frauds. Although it could be argued the statute of limitations would limit any claim against the corporate entity this Court is convinced that long before the statute tolled the individual defendants Robert C. Young and Patricia R. Young completely frustrated the corporate purpose and were using the assets of the corporation as their own without benefit of dissolution of the corporation. It had in point of fact ceased to be a church, if it ever was one.

The Court makes the following determinations and will sign an order in accordance with the following opinion. And I might refer counsel to the law of the State of Michigan which provides for the dissolution of corporations to protect minority stockholders. It certainly is applicable in the instant case, in such cases where the corporate purpose cannot be obtained. That is the case of *Holden v. Lashley-Cox Land Company*, 316 Mich 478.

The corporate defendant has been and now is being operated for the sole benefit of the individual defendants to the detriment of the plaintiffs, and does not have as its corporate purpose spiritual goals but is in fact set up for the purpose of developing a residential subdivision.

The corporation is therefore dissolved. As a matter of fact, the corporate purpose cannot be attained and was never intended to be attained by the defendants Young.

That the conduct of the defendant officers of the corporation as outlined constitutes a fraud and a breach of trust on the rights of the plaintiffs and justifies a court of equity on the complaint of the plaintiffs to compel restitution of funds improperly taken; to appoint a receiver and to order dissolution of the corporation, because over a period of years the property rights of the plaintiffs have been subverted.

Pursuant to agreement, or rather, not in pursuance of the agreement the subdivision has not been developed.

A judgment shall enter which provides for the imposition of the written covenants introduced into evidence to be affixed to each and every residentially platted lot in the subdivision.

The receiver shall take possession of the corporate assets of the corporate defendant, and in particular assume possession of all of the land which lies between the two subdivisons, Heartpeace Hills and Heartpeace Hills No. 2, as well as the land described in the Buckerfield exhibit as "Exception for

Church". The receiver shall sell and dispose of all of the residential lots in the two subdivisons yet unsold.

The land remaining between Heartpeace Hills subdivisions and Heartpeace Hills subdivision No. 2 and the 3.24 acres described as "Exception for Church" shall be subject to uses for part purposes of the lot owners in the two platted subdivisions, and shall be bound by identical covenants running with the land which carry out these purposes.

The receiver shall pursuant to law use the proceeds of the sale of the residential lots to carry out the original purpose of the defendants Young and the plaintiffs in providing recreational facilities to the extent possible on the two common areas described, including tennis courts and a swimming pool.

The receivership obviously should be subject to any lawful claims that would exist against the corporation in being, including any claims that rightfully should be present when confronted by dissolution of a corporation. The Court has in mind as one item the proceeds of the sale of the defendants Youngs' home. Although they do not have clean hands this is a court of equity. The Court is of the opinion that there should be appropriate allocation made so that ultimately the receiver in carrying out the instructions of the Court should make a determination, or present to the Court for determination an allocation as to what the claim of the Youngs would consist of and the extent to which it should be allowed, contrasted with the funds that are left that are needed to provide for the recreational facilities above described.

This judgment is based upon the facts and the situation as of May 16, 1978, the Court having viewed the premises carefully with both counsel.

The Court shall retain jurisdiction. A receiver will be named by the Court at the time the judgment is presented for signing.

The Court will sign an order to that effect.

* * *

APPENDIX B

ORDER OF MICHIGAN SUPREME COURT

(Entered May 27, 1981)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room in the City of Lansing, on the 27th day of May in the year of our Lord one thousand nine hundred and eighty one.

Present the Honorable
MARY S. COLEMAN,
Chief Justice,

CR 29-421b
(29-421c)
(29-421d)
(29-421e)

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associate Justices

ROBERT and JUDITH BOGRETTE, et al,
Plaintiffs-Appellees,

v

SC: 64990
COA: 78-5213
LC: 77-152370-AZ

ROBERT C. YOUNG and PATRICIA R. YOUNG, JANE JONES and FELLOWSHIP OF CHRIST CHURCH, an Ecclesiastical corporation,
Defendants-Appellants,

and

DAVID and DEBORAH EVANS,
Defendants-Appellees.

On order of the Court, the motion for immediate consideration and the Attorney General's motion to intervene for the purpose of filing a brief in support of reconsideration are considered, and they are GRANTED. The motion for reconsideration of this Court's order of December 3, 1980, is DENIED because it does not appear to the Court that the order was entered erroneously.

The motion for stay is DENIED as moot.

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STATE OF MICHIGAN — ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 27th day of May in the year of our Lord one thousand nine hundred and eighty one.

(Seal)

/s/ Corbin R. Davis
Deputy Clerk

Office-Supreme Court, U.S.
FILED
SEP 1 1980
ALEXANDER L. STEVAS,

80-1843
No. 80-

In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT C. and PATRICIA R. YOUNG,
JANE JONES, AND FELLOWSHIP OF CHRIST CHURCH,
PETITIONERS,

VS.

ROBERT and JUDITH BOGRETTE, WILLIAM and TRACIE CUPPIE,
OLAF and EMERIN HELLAND, JOHN T. and BERNICE HUGHES,
KENNETH and ELIZABETH STAUGAARD, CHARLES and
CAROL COHOON, and LEO W. BURTON,
RESPONDENTS.

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED

1. Does the Fourteenth Amendment prohibit a court from deciding a case based upon matters which the court stated at the commencement of trial were not in issue in the case, and from granting relief to a party far beyond which the court stated (at the start of trial) could be awarded in the case?

2. Do the First and Fourteenth Amendments to the Constitution of the United States prohibit a civil court from dissolving a duly constituted church and appointing a receiver over its property without, at a minimum, affording prior notice and an opportunity to defend?

3. Do the First and Fourteenth Amendments prohibit a civil court from resolving disputes involving real property by reference to church doctrine?

4. Does Michigan Statute (MCLA §450.180) prohibit courts of that state from dissolving a duly constituted church and appointing a receiver over its property absent initiation of *quo warranto* proceedings by the Michigan Attorney General?

5. Did the trial court err when it failed to resolve the case upon the basis of the statute of frauds and failed to find that respondents did not prove the existence of a joint venture to develop the property in issue?

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II.

THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES PROHIBIT A CIVIL COURT FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY WITHOUT, AT A MINIMUM, AFFORDING PRIOR NOTICE AND AN OPPORTUNITY TO DEFEND. PETITIONERS' CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT, WITHOUT NOTICE, DISSOLVED THE FELLOWSHIP OF CHRIST CHURCH AND APPOINTED A RECEIVER OVER ITS PROPERTY. 5

III.

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PETITIONER'S REPLY

At the time that the Petition for a Writ of Certiorari ("Petition") was submitted in this cause, a motion for intervention, filed in the Michigan Supreme Court by the Michigan Attorney General, was pending.[1] However, on May 27, 1981, the Michigan Supreme Court denied the Attorney General's motion.[2] Thus, although the Attorney General for the State of Michigan has stated that the judgment should be declared void because the trial court exceeded its jurisdiction, the Michigan Supreme Court declined to consider this issue on its merits.

I.

A LITIGANT MUST BE ABLE TO RELY ON A TRIAL COURT'S EXPRESSED LIMITATION OF THE ISSUES TO BE TRIED AND THE EXTENT OF THE RELIEF AVAILABLE TO THE PARTIES. PETITIONERS' RIGHT TO DUE PROCESS OF LAW WAS VIOLATED IN THE INSTANT CASE BECAUSE THE COURT, WITHOUT NOTICE, DECIDED THE CASE ON A BASIS CONTRARY TO, AND GRANTED RELIEF WHOLLY BEYOND, THE PREVIOUSLY EXPRESSED LIMITATIONS

Respondents begin their Brief in Opposition to Petition for a Writ of Certiorari ("Opposing Brief") by stating that this case involves an attempt "to prevent [p]etitioners from absconding to the Province of British Columbia" with all of the property of the Fellowship of Christ Church (Opposing Brief, p. 3). This *ad hominem* argument seems calculated to obfuscate the true facts and legal issues presented to this Court for review. Indeed, if the trial record is examined, absolutely no evidence will be found that the petitioners

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[1] *See* Petition, p. 6.

[2] The Michigan Supreme Court also denied petitioners' motion for reconsideration of that Court's previous denial of their application for leave to appeal from the decision of the Michigan Court of Appeals.

were attempting to abscond with property not belonging to them; nor was it ever asserted that Church assets were to be used for other than Church purposes. The reason for this is quite simple: the litigation *only* concerned legal entitlement to the 22 acres of land in question. Stated in other terms, the sole issue presented to the trial court was whether or not the Fellowship of Christ Church and its Advisory Board breached an alleged joint venture agreement with respondents, former members of the Church, by attempting to sell certain realty which had been titled in the name of the Church for seventeen years. Respondents claimed that the property belonged to the venturers; petitioners asserted that it belonged to the Church. The respondents did not claim that they constituted the Church congregation or that the petitioners did not; nor did the respondents assert that the Church could sell the property for some purposes but not for others. In other words, whether or not the congregation intended to sell some of its property and move from Rochester to Detroit, or to Chicago, or even abroad, was and is immaterial to the only issue tried to the circuit court, viz., who is entitled to the 22 acres in question?

The trial record discloses that the decision to relocate the Church was made by the congregation openly and was conveyed to the respondents (and to the general public) almost two years before this suit was instituted:

1. A recommendation to sell the Church property was made by the Advisory Board of the Fellowship of Christ Church on July 4, 1975.

2. This decision was ratified unanimously by the Church congregation on July 20, 1975 (defendants' trial Exhibit D).

3. On August 14, 1975, Robert C. Young wrote to the respondents to advise them of the Church's decision to sell the property (see deposition Exhibit 4 to the deposition of Robert C. Young, pp. 91-8).

4. Kenneth Staugaard, and the other respondents, acknowledged receipt of this letter and wished the Church congregation well (see deposition Exhibit 3 to the deposition of Kenneth Staugaard, pp. 111-2).

5. The Fellowship of Christ Church offered to sell the property in question to the Church which respondents had joined (when they withdrew from the Fellowship of Christ Church in 1969), but the offer was declined.

6. The property was advertised for sale in the *Detroit Free Press* on August 20, 1975, and was later listed with two different real estate agents.

7. In the Spring of 1976, Fellowship of Christ Church counsel in Michigan and Canada began to prepare legal papers to accomplish relocation of the Church corporation to British Columbia. The Michigan Department of Commerce was contacted in this regard.

8. Upon the advice of a real estate agent engaged by the Church, on January 11, 1977, the Church petitioned to have a portion of the property subdivided (plaintiff's trial Exhibit 50). This petition was denied due to inadequacy of easements to the property.

9. Respondents initiated this lawsuit on March 7, 1977.

In sum, respondents have tried to create the impression that the Church's decision to sell its property and to relocate was reached in a clandestine manner to allow petitioners to "abscond" with certain unspecified property of the Church. This is untrue and unsupported by the record.

Respondents also assert throughout their Opposing Brief that petitioners Young and Jane Jones intended to appropriate Church property for their personal use. This also is untrue. No such allegations were made, defended, or proved. The respondents asserted that *the Church's* decision to sell its property and to relocate was contrary to the alleged joint venture and it is *that decision* which forms the basis of the Cohoon Complaint. Neither the respondents nor the trial judge ever asserted during trial that the actions of the individual petitioners were not taken on behalf of the Church.

Respondents concede that the trial court expressly limited the parties to the facts pleaded and relief sought in the Cohoon Complaint; this, they say, states the obvious (Opposing Brief, p. 12). It *is* obvious because anything less would violate a litigant's due process right to "know the claims of the opposing party and [be afforded an

opportunity] to meet them." (*Morgan* v *United States*, 304 U.S. 1, 18 (1938)).

Respondents tried their case, and petitioners defended it, strictly in accordance with the claims and prayers contained in the Cohoon Complaint. On the basis of that Complaint, respondents sought to prove that they were entitled to the 22 acres of land under their joint venture theory. Petitioners, on the other hand, asserted than no such joint venture ever existed; they contended that the property was purchased, maintained and developed by the entire Church congregation and not by and for the benefit of a certain select few. At the conclusion of respondents' proofs, petitioners believed that the trial testimony of respondents established this conclusion beyond dispute and, thus, presented no testimony of their own.

If petitioners had been apprised through the Cohoon Complaint, or by statements made during trial (by the respondents or the trial judge) that the court would consider such issues as (a) the *bona fide* existence of the Church; (b) composition of the Church membership, (c) use of Church property for individual purposes and (d) dissolution and receivership, then petitioners most certainly would have responded in an appropriate manner. However, because these questions were never raised, petitioners never sought to answer them.

For example, in their Opposing Brief, respondents concede that they never claimed any of the petitioners set out to defraud them. They state, as if to apologize for the trial court's opinion, that respondents "did not allege fraudulent inducement nor did [r]espondents desire to make this an allegation." (Opposing Brief, p. 12.) Yet, can there be any doubt that the trial judge, for reasons which are not in the record, based his entire decision on the belief that petitioners established the Church and sought to use it to defraud the respondents? Similarly, respondents admit that they "did not specifically pray for the dissolution of the ecclesiastical corporation or the appointment of a receiver." (Opposing Brief, p. 20.)

If due process means anything, it must mean that petitioners should not have to present evidence in defense of actions which have never been called into question or to avoid consequences which have

never been threatened. This is why respondents' attempt to justify the trial court's decision is so offensive: to support the trial judge's opinion on the basis of alleged wrongdoing which *no one* ever questioned, and to support the judgment, under which petitioners' *Church was dissolved*, on the basis of abstract notions of equitable power, is so inherently unfair as to shock the conscience and render the rule of law meaningless.

II.

THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES PROHIBIT A CIVIL COURT FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY WITHOUT, AT A MINIMUM, AFFORDING PRIOR NOTICE AND AN OPPORTUNITY TO DEFEND. PETITIONERS' CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT, WITHOUT NOTICE, DISSOLVED THE FELLOWSHIP OF CHRIST CHURCH AND APPOINTED A RECEIVER OVER ITS PROPERTY.

This issue is extensively discussed at pages 15-17 of the Petition for a Writ of Certiorari. In their Opposing Brief, respondents concede that they sought neither dissolution or receivership, but state merely that petitioners should have known that such "were forms of relief within the equitable jurisdiction of the trial court" (Opposing Brief, p. 20). Petitioners trust that this Court will not permit such penalties to be imposed, under the guise of law, on persons or institutions in this country without fair notice and an opportunity to defend.

Moreover, even assuming *arguendo* that alleged misconduct of petitioners had been claimed and proved, remedies far less intrusive than dissolution were available and should have been employed. The recent Michigan case of *Petitpren* v *Taylor School District*, 104

Mich App 283 (1981), reported subsequent to the filing of the Petition, is squarely on point. In that case, the plaintiff was suspended from his position as superintendent of schools by the Taylor Board of Education due to alleged financial misconduct. After a number of hearings on plaintiff's suit to challenge the dismissal, the trial court appointed a receiver for the school district. The Michigan Court of Appeals reversed, holding that the trial judge exceeded his jurisdiction by appointing a receiver for the school district under the circumstances presented. The Court held that appointment of a receiver is a "harsh remedy" to be used only in extreme cases and *only if* "less intrusive means" are unavailable to effectuate the relief granted by the trial court (104 Mich App at 295).

The Court noted that plaintiff's suit was instituted "in order to challenge his suspension" and that it "is difficult to imagine how a receivership was in any way ancillary to the relief sought" (104 Mich App at 296). As in the instant case, the Michigan Court of Appeals also observed

> "it is striking that none of the parties present in the case at the time the receivership was ordered had ever requested such relief. Imposition of the receivership was totally unconnected with the questions that needed to be resolved...." 104 Mich App at 297.

For like reasons, this Court is asked to hold that judicial interference on the scale undertaken in the instant dispute cannot be tolerated.[3]

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[3] See, also, *People* v *Israelite House of David*, 246 Mich 606 (1929), involving an action brought by the Michigan Attorney General to abate an alleged public nuisance created by the leaders of a religious association. On review, the Michigan Supreme Court affirmed the circuit court decree granting injunctive relief to abate the nuisance, but held that it was error for the trial judge to appoint a receiver over the association's property because it appeared that its members had been defrauded. The Michigan Supreme Court summarized plaintiffs' arguments as follows:

> "The plaintiff's contention is that equity having acquired jurisdiction full relief should be rendered, and if necessary, a

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III.

THE FIRST AMENDMENT REQUIRES THAT NEUTRAL PRINCIPLES BE EMPLOYED BY CIVIL COURTS WHEN RESOLVING CHURCH DISPUTES. IN THE INSTANT CASE, THE TRIAL COURT FAILED TO APPLY NEUTRAL PRINCIPLES, IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS.

Respondents state that the trial judge acknowledged the constitutional restraints of the First Amendment and then "proceeded to decide the parties' dispute strictly upon the neutral principles of joint venture. . . ." (Opposing Brief, p. 15). In fact, this is not what happened at all. As petitioners note at page 15 of their Petition, the trial judge acknowledged that a court cannot interfere in the internal affairs of a church, but then proceeded to do that very thing based upon his conclusion that the Fellowship of Christ "was a church without a congregation" and that "the so-called ecclesiastical corporation [was] not a church."

Respondents do not dispute the fact that no such claims had ever been made prior to or during trial; they state merely, without explanation, that "there were many reasons to doubt" that the Fellowship of Christ was a bona fide church. Respondents never raised

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> receiver or conservator of the property should be appointed by the court to assist in attaining the ends of justice." 246 Mich at 616.

The Court, after observing that "the particulars of any alleged frauds are [not] set forth in the pleadings" and that the "primary purpose of this suit" was to abate a nuisance (246 Mich at 617), stated in support of its decision to set aside the receivership:

> "We know of no authority which would justify the State in attempting to intervene and in a paternalistic way by means of a receivership work out collectively the various conflicting claims of the defendants." 246 Mich at 617.

such doubts — nor did the court — and, as a result, they can point to nothing in the record to support the trial judge's statements. Respondents' ambiguous representation that "[e]ssentially the only members of the so-called church" were petitioners Robert and Patricia Young and Jane Jones is unsupported in the record and untrue; however, for reasons stated in the Petition, *even if it were true*, that would not justify the trial court's conclusion that a church did not exist.

IV.

MICHIGAN STATUTE (MCLA §450.180) PROHIBITS COURTS OF THAT STATE FROM DISSOLVING A DULY CONSTITUTED CHURCH AND APPOINTING A RECEIVER OVER ITS PROPERTY ABSENT INITIATION OF *QUO WARRANTO* PROCEEDINGS BY THE MICHIGAN ATTORNEY GENERAL.

As noted at the outset of this Reply Brief, the Michigan Supreme Court declined to consider the merits of the Michigan Attorney General's assertion that the trial court exceeded its jurisdiction, rendering void the judgment upon which this certiorari petition is based. Respondents do not attempt to distinguish the clear Michigan case law holding that only the state's Attorney General has authority to initiate proceedings to obtain *quo warranto* relief, *Jackson Prosecutor* v *Sisters of Mercy*, 74 Mich App 374 (1977), and absent compliance with this requirement, courts lack the jurisdiction to render a valid judgment. *Dartland* v *Hancock Schools*, 25 Mich App 14 (1970).

V.

THE TRIAL COURT ERRED WHEN IT FAILED TO RESOLVE THE CASE UPON THE BASIS OF THE STATUTE OF FRAUDS AND FAILED TO FIND THAT RESPONDENTS DID NOT PROVE THE EXISTENCE OF A JOINT VENTURE TO DEVELOP THE PROPERTY IN ISSUE.

At the conclusion of respondents' case, petitioners believed that respondents had failed to prove the existence of a joint venture. The trial judge had already recognized that respondents had not produced any written evidence of the venture (Petition, p. 23). Furthermore, petitioners believed that respondents had not proved the existence of a venture based upon the trial testimony. That respondents purchased their individual lots without any other understanding (Petition, pp. 25-6) is borne out by the trial judge's finding "until the time of the disagreement which came about . . . no one discussed such esoteric questions as property rights. . . ." (Appendix to Petition, 3a). The testimony showed, furthermore, that the twenty-two acres in question had been purchased *by the Church* in 1960 and since that time has been continuously financed, developed and maintained by the entire Church membership for the Church congregation and not by and for the benefit of a special interest group of the respondents.[4]

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[4] As noted, according to respondents' theory of the case, as a result of private meetings and discussions not made known to the general Church congregation, Appendix to Petition, 1w, respondents, though Elders and Officers of the Church, schemed to obtain ownership of the 22 acres at the expense of the general Church congregation. That such an arrangement actually existed is incredible and to enforce it would be manifestly unjust.

VI.

CONCLUSION.

The trial judge, without warning, rendered an opinion replete with erroneous facts, extraneous material and extravagant language directed against the petitioners on issues never in the case. Petitioners' reliance on the pleadings and proofs presented at trial was proper, but the trial court violated its own order limiting the issues and has violated petitioners' due process and First Amendment rights as a result. In doing so the Court, without being asked and without any support in the record, decided that petitioner was not a church; proceeded to dissolve it; and appointed a receiver over its assets. All of this was done, apparently, on the premise that such a small congregation did not deserve recognition as an ecclesiastical corporation nor did it even have the right to continue to exist. The annals of jurisprudence in this country can be searched in vain for a more blatant example of the extermination of a church by judicial fiat.

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